

DRAFT

MINUTES – 12 DECEMBER 2017



PORT STEPHENS C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 12 December 2017, commencing at 6.42pm.

PRESENT:

Mayor R Palmer, Councillors J Abbott, G Arnott, G Dunkley, K. Jordan, P. Le Mottee, J Nell, S Smith, S. Tucker, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Manager.

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017

MOTION

300	Councillor Ken Jordan Councillor Jaimie Abbott It was resolved that Council grant leave of absence to Cr Chris Doohan.
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MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017
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301

Councillor Steve Tucker
Councillor Glen Dunkley

It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 28 November 2017 be confirmed.

Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 2. The nature of the interest is that the Le Mottee Group is the applicant in this matter.

Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 3. The nature of the interest is that the Le Mottee Group has clients that may be affected by this matter.

Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 4. The nature of the interest is that the Le Mottee Group has clients that may be affected by this matter.

Cr Ken Jordan declared a significant non - pecuniary conflict of interest in Item 3. The nature of the interest is a past friendship with the neighbours. matter.

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 17/234140
RM8 REF NO: PSC2017-00180

MOTION TO CLOSE

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely ***Acquisition of part of 110 Magnus Street, Nelson Bay for the Yacaaba Street Extension.***
 - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
 - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION

302	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 0 on the Ordinary agenda namely <i>Acquisition of part of 110 Magnus Street, Nelson Bay for the Yacaaba Street Extension.</i>2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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ITEM NO. 2

FILE NO: 17/244390
RM8 REF NO: PSC2015-01024

MOTION TO CLOSE

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) and (d)i of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely ***Amendment to recycling processing contract.***
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business, and
 - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION

303	<p>Councillor Glen Dunkley Councillor Jaimie Abbott</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) and (d)i of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 0 on the Ordinary agenda namely <i>Amendment to recycling processing contract.</i>2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business, and
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	<ul style="list-style-type: none">• commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it. <p>3) That the report remain confidential and the minute be released in accordance with Council's resolution.</p>
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**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

304	Mayor Ryan Palmer Councillor Glen Dunkley It was resolved that Council Notice of Motion No. 1 and 3 be brought forward and dealt with prior to Item 1 on the agenda.
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NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 17/236390

RM8 REF NO: PSC2017-00019

WANDA AND MAMBO WETLANDS

COUNCILLOR: JAIMIE ABBOTT

THAT COUNCIL:

- 1) Recognises the high biodiversity values of Wanda and Mambo wetlands, and the community's aspiration to see all undeveloped allotments consolidated into a single protected reserve.
- 2) Recognises the need for the proposed declaration of Aboriginal Places at Wanda Wetland and Mambo Wetland to be prioritised and completed as soon as possible.
- 3) Recognises the need for an updated Management plan to be prepared in consultation with the community.
- 4) To achieve these outcomes, funding be sought from the NSW Government for Council to:
 - a. Acquire DP27353, being the former NSW Department of Education School site within Mambo Wetlands, to ensure Port Stephens ratepayers are not required to pay to buy back public land within the Mambo Wetlands site;
 - b. If negotiations for a voluntary sale are unsuccessful, the compulsory acquisition be pursued by Port Stephens Council;
 - c. Fund the Management Plan update including protection of koala habitat.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

305	Councillor Jaimie Abbott Councillor John Nell It was resolved that Council: <ol style="list-style-type: none">1) Recognises the high biodiversity values of Wanda and Mambo wetlands, and the community's aspiration to see all undeveloped allotments consolidated into a single protected reserve.2) Recognises the need for the proposed declaration of Aboriginal Places at Wanda Wetland and Mambo Wetland to be prioritised and completed as soon as possible.
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MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

	<ul style="list-style-type: none">3) Recognises the need for an updated Management plan to be prepared in consultation with the community.4) To achieve these outcomes, funding be sought from the NSW Government for Council to:<ul style="list-style-type: none">a. Acquire DP27353, being the former NSW Department of Education School site within Mambo Wetlands, to ensure Port Stephens ratepayers are not required to pay to buy back public land within the Mambo Wetlands site;b. If negotiations for a voluntary sale are unsuccessful, the compulsory acquisition be pursued by Port Stephens Council;c. Fund the Management Plan update including protection of koala habitat.
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**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

306	Councillor John Nell Mayor Ryan Palmer It was resolved that a Council division be called.
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Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
AMENDMENT**

	Councillor Giacomo Arnott That Council: <ul style="list-style-type: none">1) Recognises the high biodiversity values of Wanda and Mambo wetlands, and the community's aspiration to see all undeveloped allotments consolidated into a single protected reserve.2) Recognises the need for the proposed declaration of Aboriginal Places at Wanda Wetland and Mambo Wetland to be prioritised and completed as soon as possible.3) Recognises the need for an updated Management plan to be prepared in consultation with the community.4) To achieve these outcomes, funding be sought from the NSW
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MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

	<p>Government for Council to:</p> <ol style="list-style-type: none">Acquire DP27353, being the former NSW Department of Education School site within Mambo Wetlands, to ensure Port Stephens ratepayers are not required to pay to buy back public land within the Mambo Wetlands site;If negotiations for a voluntary sale are unsuccessful, the compulsory acquisition be pursued by Port Stephens Council;Fund the Management Plan update including protection of koala habitat. <p>5) Council requests the NSW State Government to acquire the land under section 145 of the National Parks and Wildlife Act.</p>
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The amendment lapsed without a seconder.

BACKGROUND REPORT OF: MIKE MCINTOSH – DEVELOPMENT SERVICES GROUP MANAGER

BACKGROUND

The decision of the Department of Education to sell the land locally known as the 'Old School Site' adjacent to the Mambo Wetlands in Salamander Bay has caused much concern and angst within the community, primarily on the grounds of protecting the natural environment both on the site and in the adjacent wetland.

At the time of writing, a Development Application (DA) for a dual occupancy residential development had recently been withdrawn. Prior to its withdrawal the DA was advertised publicly. A large number of submissions from members of the public, including 329 individual submissions, 525 pro-forma letters (template letters signed by different objectors), and a petition with 1146 signatures were received during this period.

Recognition of Biodiversity values

The land in question is currently zoned E2 - Environmental Conservation. The objectives of this zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

It is understood that the possibility of zoning the land to increase environmental values and controls to E1 – National Parks and Nature Reserves has been proposed in the past. At the time, for reasons unknown, State agencies were reluctant to rezone this parcel to E1.

The objectives of the E1 zone are:

- To enable the management and appropriate use of land that is reserved under the National Parks and Wildlife Act 1974 or that is acquired under Part 11 of that Act.
- To enable uses authorised under the National Parks and Wildlife Act 1974.
- To identify land that is to be reserved under the National Parks and Wildlife Act 1974 and to protect the environmental significance of that land.

To explore the merits of rezoning the land from E2 Environmental Conservation to E1 National Parks and Nature Reserves, Council would need to forward a planning proposal the NSW Department of Planning and Environment to seek a gateway determination.

Aboriginal Place Declaration

Council and the Office of Environment and Heritage (OEH) agreed, circa 2013, that Council would consider four (4) Aboriginal Place nominations in the following order and potentially endorse same after a suitable management agreement had been established for the proposed places:

- a. Priority 1 - Soldiers Point – declared an Aboriginal Place in 2015 – current management agreement in place.
- b. Priority 2 - Birubi Point – declared an Aboriginal Place in 2007 – management agreement scheduled for completion in mid-2018.
- c. Priority 3 - Bagnalls Beach – Council received notification of an Aboriginal Place nomination circa 2005.
- d. Priority 4 - Wanda Wetlands – Council received notification of an Aboriginal Place nomination circa 2013.

The reasons for this approach were:

- To ensure that Council and the Aboriginal community were fully informed of the liberties and limitations that an Aboriginal Place declaration might have on the land.
- To make the appropriate plans to resource any changes to land management prior to the Aboriginal Place being declared.
- To align with advice from OEH and Aboriginal advisors that the cultural values of the sites are most clear and known at this time in the priority order.

Council is aware that OEH is also in receipt of a nomination for Mambo Wetland and that when prioritised would be assessed concurrently with the nomination for Wanda Wetland. The reason for this approach is due to the proximity of both wetlands to each other and to streamline the consultation process into one Aboriginal Place nomination.

There are no scheduled timeframes or resources allocated within Council to progress any Aboriginal Places until the completion of the Birubi Point Aboriginal Place management plan. The consultation and approvals process for such a management agreement has shown to take upwards of 52 weeks per nomination.

Update Management Plan

The existing Plan of Management (2006) was developed by Council in consultation with key stakeholders being the Mambo Wetland Steering committee, representatives of the local aboriginal community and local Landcare groups. This existing Plan of Management has a strong environmental focus and provides guidance over the state of the environment within the bounds of the site as well as identifying potential threats to the Mambo Wetland area from external forces. The plan as currently adopted provides environmental safeguards relative to the Mambo Wetlands site and an update of the plan has not been identified as a priority to date. At present, Council does not have the resources or funding for the review of this plan within the next 2 years given the existing program of works and review priorities.

Land Acquisition

Council could negotiate with the current owner to purchase the allotment and request the State Government to reimburse Council for all costs associated with the purchase. Alternatively actions required to facilitate a Compulsory Acquisition of the land can also be investigated.

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: 17/237215

RM8 REF NO: PSC2017-00019

MAMBO WETLANDS PETITION

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Support the petition of the Member for Port Stephens calling on the NSW Government to buy back the Mambo Wetlands.
 - 2) Allow copies of the petition in Council venues including libraries and administration center.
-

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

	<p>Councillor Giacomo Arnott Councillor John Nell</p> <p>That Council:</p> <ol style="list-style-type: none">1) Support the petition of the Member for Port Stephens calling on the NSW Government to buy back the Mambo Wetlands.2) Allow copies of the petition in Council venues including libraries and administration center.
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**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
AMENDMENT**

307	<p>Councillor Jaimie Abbott Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Acknowledges the second petition the Member for Port Stephens has taken or plans to take to the NSW Government to buy back the Mambo Wetlands;2) Requests the Member for Port Stephens support the proposed partnership with NSW Government to fund Port Stephens Council's
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	acquisition of the site and its consolidation into Council's existing Mambo Reserve.
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The amendment on being put became the Motion, which was put and carried.

BACKGROUND REPORT OF: MIKE MCINTOSH – DEVELOPMENT SERVICES GROUP MANAGER

BACKGROUND

The decision of the Department of Education to sell the land locally known as the 'Old School Site' adjacent to the Mambo Wetlands in Salamander Bay has caused much concern and angst within the community, primarily on the grounds of protecting the natural environment both on the site and in the adjacent wetland.

Prior to the sale of the land, in May 2016 Council wrote to the Department of Education requesting the sale not proceed and that the land remain in public ownership to ensure its environmental values were maintained. The Department of Education chose not to pursue this request and sold the land to a private owner.

ATTACHMENTS

Nil.

COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 17/231016
RM8 REF NO: 16-2016-770-2**

**DEVELOPMENT APPLICATION NO. 16-2016-770-2 FOR AMENDMENTS TO
CONDITIONS OF CONSENT**

REPORT OF: ANDREW ASHTON - ACTING DEVELOPMENT ASSESSMENT &
COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Section 96(1A) modification 16-2017-770-2 for the proposed changes to the consent conditions relating to the approved Car park, Playground Extension and Relocation of Fire Trail at St Philips Christian College located at 100, 174A and 176 Salamander Way, Salamander Bay (LOT 21 DP1044009, LOT 23 DP1044009 and LOT 1 DP847022), subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

308	Councillor Ken Jordan Councillor John Nell It was resolved that Council move into Committee of the Whole.
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COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Sarah Smith That the recommendation be adopted.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

309	Councillor Paul Le Mottee Councillor Giacomo Arnott It was resolved that Council approve Section 96(1A) modification 16-2017-770-2 for the proposed changes to the consent conditions relating to the approved Car park, Playground Extension and Relocation of Fire Trail at St Philips Christian College located at 100, 174A and 176 Salamander Way, Salamander Bay (LOT 21 DP1044009, LOT 23 DP1044009 and LOT 1 DP847022), subject to the conditions contained in (ATTACHMENT 3) .
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination a modification to development application (DA) 16-2016-770-2 proposing changes to the conditions of consent.

The Section 96(1A) application has been reported to the elected Council given Council is the owner of the land at 100 and 174A Salamander Way, Salamander Bay and a portion of the site is classified as Community Land.

A locality plan is provided at **(ATTACHMENT 1)** showing the subject development site.

The existing DA (16-2016-770-1) approved a carpark associated with St Philips Christian College and relocation of the existing fire trail to the south to allow future expansion of the College sporting facilities. The main components of the development were:

- Earthworks
- Parking and setdown areas
- Formalisation of drop off areas and associated works
- Fire trial
- Landscaping
- Stormwater Management

The modification does not propose any changes to the approved works. Rather it relates to a change in the timing of registration of an agreement for, and retirement of, Biobanking Credits, which are required to offset the development's impacts.

As owner of the Biobanking land, the agreement and arrangements relating to the Biobanking credits are between Council and the Office of Environment and Heritage (OEH).

Following a review of the progress of the Biobanking Agreement, Council staff are satisfied that the finalisation of the agreement is imminent and no significant issues remain outstanding. Additionally, as Council is the landowner, the risk of the agreement not being finalised is very low. Accordingly, the proposed change to remove the deferred commencement condition requiring the registration of the biobanking agreement is supported. In addition, the delaying of compliance with Condition 8 until 'prior to the issue of an Occupation Certificate' is supported.

It should be noted that the proposal does not reduce the required number of biobanking credits to be retired.

The proposed amendments do not present a significant impact on the locality and is recommended to be approved, subject to the amended consent contained in **(ATTACHMENT 3)**. A detailed assessment of the proposal against the provisions of s.96 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated negative financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	Yes		Section 94 applies to the development.
External Grants	No		

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Source of Funds	Yes/No	Funding (\$)	Comment
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Policy.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused, construction of the approved car parking and manoeuvring areas will be delayed by 12months, resulting in ongoing traffic issues for the locality in the intervening time.	High	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development is consistent with surrounding developments and is in keeping with the context of the locality. The proposed amendments to the consent are not anticipated to have significant adverse impacts on the locality, surrounding properties or public places. The proposal will facilitate construction of the approved development in the shorter term that will result in a more efficient construction timetable of the educational facility. It is therefore considered that the proposal will have a positive impact on the social and economic wellbeing of the local community as the approved development will be able to be completed outside of school terms.

A detailed assessment of the proposed development has been carried out against the requirements of the *Environmental Planning and Assessment Act 1979* and has been included as **(ATTACHMENT 2)** to this report.

CONSULTATION

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

Internal

The application was referred to the Natural Resources section. No objections were made to the proposal. Comments received noted that the proposed modification will not alter the environmental impact assessed under the original application.

External

The application was originally referred to the NSW Water as Integrated Development. The original referral response stated that the proposal did not require a Controlled Activity Approval and no objections to the application were made.

Public Consultation

In accordance with Councils Development Control Plan 2014, the application has not been notified or advertised. No submissions were received relating to the amendments during the assessment period.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan.
- 2) S96 Assessment Report.
- 3) S96 Notice of Determination.

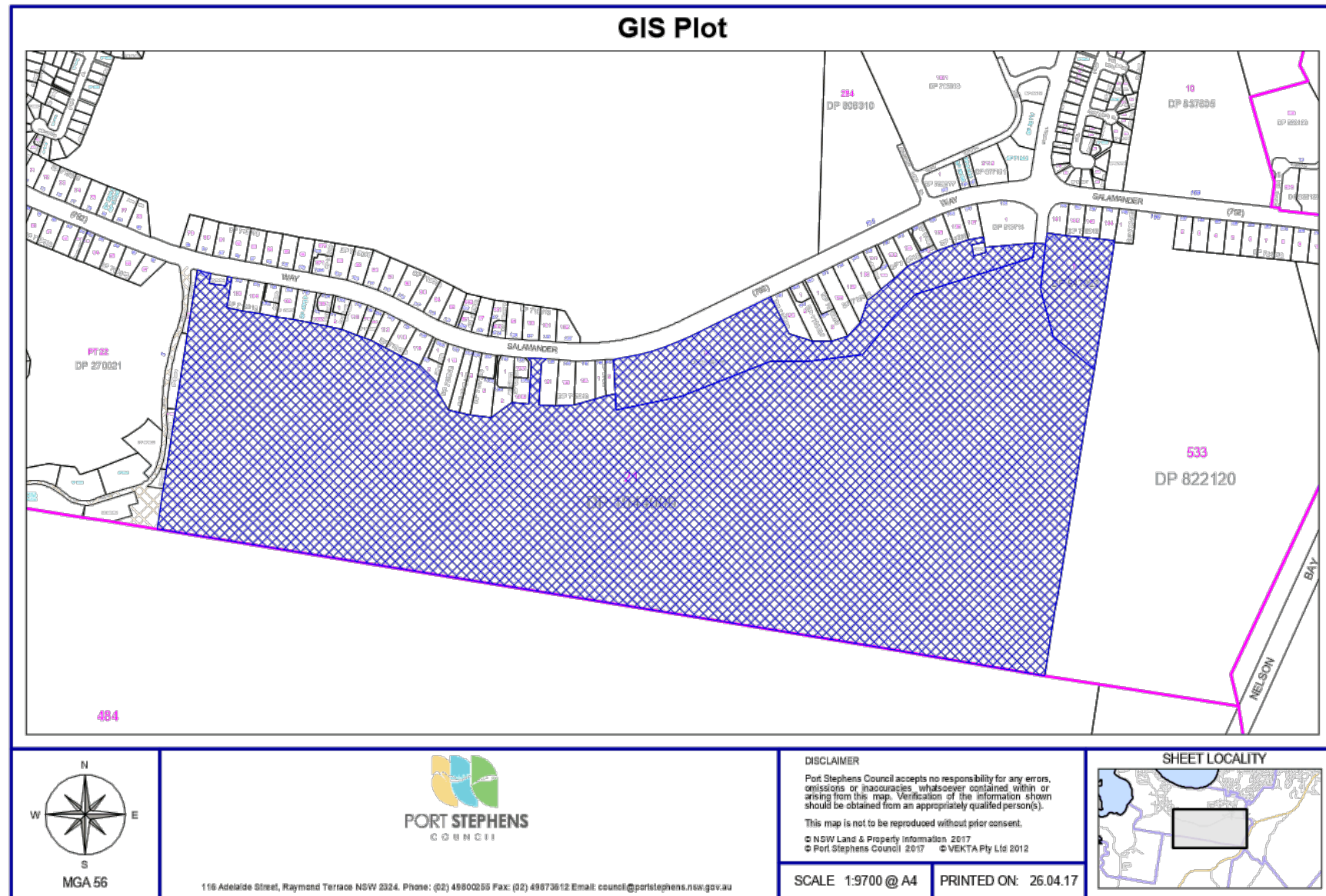
COUNCILLORS ROOM

Nil.

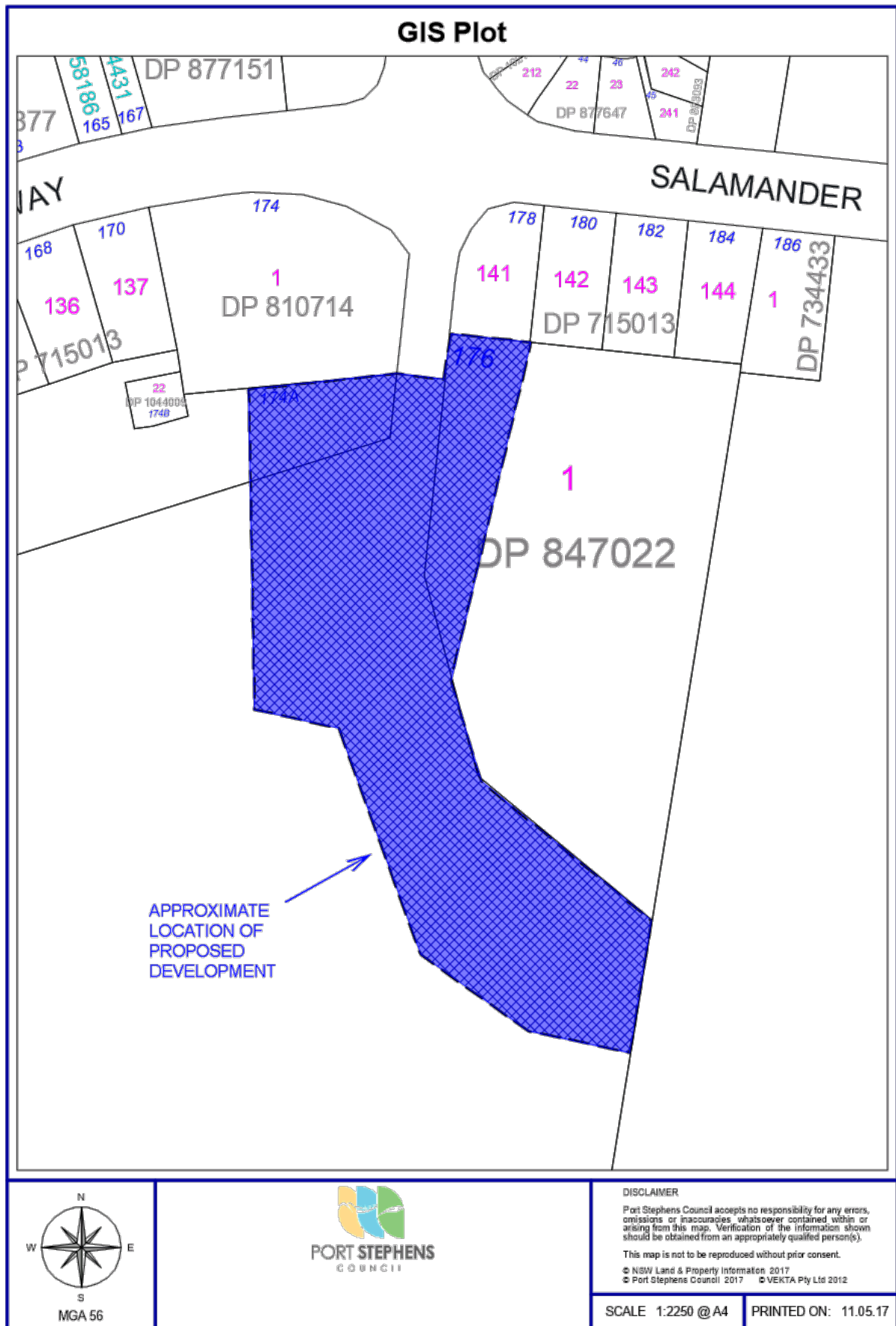
TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.



PORT STEPHENS
COUNCIL

S96(1A) MODIFICATION APPLICATION
ASSESSMENT REPORT

APPLICATION DETAILS

Modification Application Number	16-2016-770-2
Development Description	Car Park, Playground Extension and Relocation of Fire Trail (St Phillips Christian College)
Modification Description	Amendment to Remove Deferred Commencement Condition and Alter the Timing of Biobanking Credit Retirement.
Applicant	ENVIRONMENTAL PROPERTY SERVICES
Date of Lodgement	13/11/2017

Modification Proposal

The application proposes to modify the consent conditions to allow for the commencement of works prior to the finalisation of the Biobanking Agreement between Council and the Office of Environment and Heritage (OEH).

The amendment includes the removal of the deferred commencement condition that required the agreement be registered prior to the issue of an operational consent.

Condition 8 is also proposed to be amended to move the retirement of Biobanking credits from 'prior to the issue of the Construction Certificate' to 'prior to the issue of an Occupation Certificate'.

The proposed changes will allow for St Phillips Christian College to commence works onsite during the summer holiday period.

Following a review of the progress made with the bio-banking agreements between the land owner and OEH, Council was satisfied that the finalisation of the agreement was imminent and that no significant issues were still outstanding. The risk of the agreement not being finalised has therefore reduced and the changes to the consent conditions are therefore considered acceptable.

It should be noted that the proposal does not alter the proposed development footprint or reduce the required number of bio-banking credits to be retired.

Background

The original application under DA 16-2016-770-1 proposed a carpark associated with St Phillips Christian College and relocation of the existing fire trail to the south to allow future expansion of the College sporting facilities.

The main components of the development include:

- Earthworks
- Parking and setdown areas
- Formalisation of drop off areas and associated works
- Fire trail

ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.

16-2016-770-2

- Landscaping
- Stormwater Management

The amendments have been necessitated by an administrative issue encountered during the registration process of the Biobanking Agreement with OEH. During the initial assessment it was envisaged that the agreement would be finalised within a short timeframe. However, several administrative issues have been identified in the past 6 months that has stalled the process.

The outstanding issue relates to the minor adjustment of the zone boundary between two small sections of the subject land to conform to the land uses and the existing Biobanking Agreement registered over the land.

An expedited amendment to the *Port Stephens Local Environmental Plan 2013* (LEP2013) was lodged with the Department of Planning and Environment on 27 October 2017 to make minor adjustments to a zone boundary to ensure consistency with the Biobanking Agreement. The amendment will result in:

- Approximately 0.15 ha of land currently zoned SP2 Infrastructure will be zoned E2 Environmental Conservation; and
- Approximately 0.11 ha of land currently zoned E2 Environmental Conservation will be zoned SP2 Infrastructure.

Overall the zone boundary adjustment will result in an increase in land zoned E2 Environmental Conservation. The extent of the zone boundary adjustment is shown at Figure1 below.

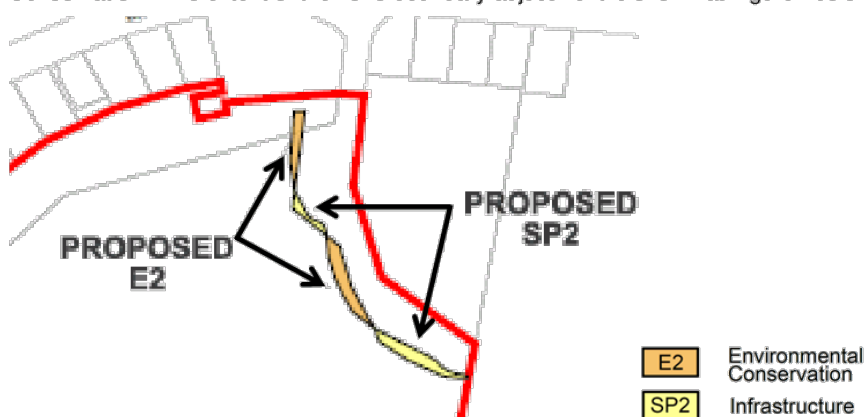


Figure 1: Proposed zone boundary adjustments included in the expedited rezoning application

The zone boundary adjustment is necessary to facilitate the retirement of Biobanking credits under the registered Biobanking Agreement and ensure the land identified for Biobanking is consistent with the zoning in the PSLEP2013.

As the changes to the PSLEP2013 are considered minor and will not have any significant adverse impact on the environment or adjoining land, the amendment has been submitted under the provisions of the planning legislation that allow minor amendments to be made without exhibition.

A draft of the Biobanking Statement has been issued and it is understood that it will be finalised once the expedited amendments to the PSLEP2013 are gazetted.

ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.

16-2016-770-2

PROPERTY DETAILS

Property Address	100 Salamander Way SALAMANDER BAY, 174A Salamander Way SALAMANDER BAY, 176 Salamander Way SALAMANDER BAY
Lot and DP	LOT: 21 DP: 1044009, LOT: 23 DP: 1044009, LOT: 1 DP: 847022
Zoning	E2 ENVIRONMENTAL CONSERVATION / PART SP2 INFRASTRUCTURE / PART RE1 PUBLIC RECREATION
Site Constraints That Affect The Modification	Bushfire Prone Acid Sulfate Soils (Class 3 & 4) Koala Habitat (Core & Preferred) Swamp Sclerophyll Forest Wetlands (SEPP 14) Coastal Zone (SEPP71) Draft Coastal SEPP (Coastal Use & Wetlands Areas) Biobank Site

ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff listed have been used to carry out the assessment against the S79C Matters for Consideration below.

Natural Resources – No objections were made as the proposal. Comments received noted that the proposed modification will not alter the impact assessed under the original application.

External Referrals

The proposed modification was not referred to any external agencies. Although the application was originally referred to NSW Water as Integrated development, correspondence was received confirming that the development did not require a Controlled Activity Approval and was sufficiently setback from the wetland.

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ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.

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MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S96(1A)

S96(1A)(a) – Minimal Environmental Impact

The proposal will not alter the footprint or operation of the approved development under DA 16-2016-770-1. The changes to the timing of the required Biobanking credit retirement will not alter the environmental impact of the development. It is therefore considered that the proposed changes will not significantly alter the environmental impact of the proposal.

S96(1A)(b) – Substantially The Same Development

The development as modified is substantially the same as the approved development as the proposal will not alter the footprint or operation of the approved development. The modification only relates to the timing of the finalisation of the Biobanking Agreement.

On this basis, the application is considered substantially the same.

S96(1A)(c) – Notification

The application has not been notified in accordance with Councils Development Control Plan 2014.

S96(1A)(d) – Submissions

There were no submissions received relating to the proposed.

S96(3) – S79C(1) Assessment

s79C(1)(a)(i) – The provisions of any EPI

The application is consistent with the provision of the PSLEP2103 and all relevant State Environmental Planning Policy's (SEPP) applicable to the proposal.

s79C(1)(a)(ii) – Any Draft EPI

		Notes (what draft EPI if needed and comments where not compliant)
	<input type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input checked="" type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	The draft Coastal SEPP was addressed in the original assessment. The proposed modification will not require any further assessment under the draft provisions.

s79C(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input checked="" type="checkbox"/> General Controls	The original assessed addressed the following DCP Chapters:

ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.

16-2016-770-2

		B.1 – Tree Management B.2 – Natural Resources B.3 – Environment Management B.4 – Drainage and Water Quality B.6 – Essential Services B.9 – Road Network & Parking It is considered that the original assessment will not be altered by the proposed modification.
C	<input type="checkbox"/> Development Types	N/A
D	<input type="checkbox"/> Specific Areas	N/A

s79C(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

	Notes (where needed)
<input checked="" type="checkbox"/> There are <u>no</u> planning agreements that have been entered into under section 93F relevant to the proposed development.	

s79C(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are <u>no</u> matters within the regulations that are relevant to the determination of the application.	

s79C(1)(a)(v) – Any coastal management plan

	Notes (where needed)
<input checked="" type="checkbox"/> There are <u>no</u> coastal management plans that are relevant to the determination of the application.	

s79C(1)(b) – The likely impacts of the development

Social and Economic Impacts

The proposal will facilitate construction of the approved development in the shorter term that will result in a more efficient construction timetable of the educational facility. The proposal will not result in the ongoing operation of the educational facility prior to a Biobanking Agreement in place. It is therefore considered that the proposal will have a positive impact on the social and economic wellbeing of the local community as the approved development will be able to be completed earlier.

Impacts on the Built Environment

The proposed changes will not alter the built environment.

ITEM 1 - ATTACHMENT 2 S96 ASSESSMENT REPORT.

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Impacts on the Natural Environment

The proposed development as originally approved under DA 16-2016-770-1 will result in the removal of vegetation to enable construction of the new carpark and set down areas. As assessed in the original application, the impacts on the natural environment have been mitigated and are therefore considered to be acceptable in this instance. No additional impact on the natural environment will occur as a result of the proposed modification.

s79C(1)(c) – The suitability of the site

The application to modify the consent conditions does not result in non-compliances with any relevant planning instruments or policies and there are no anticipated negative impacts on the locality because of these amendments. The proposed development is considered suitable for the site.

s79C(1)(e) – The public interest

The assessment of the application found that proposed amendments are in the public interest.

MODIFIED CONDITIONS

Existing Deferred Commencement Condition

The applicant must provide evidence of the approval from the Office of Environment and Heritage (OEH) to retire credits for impacts on ecological values as outlined in the Biobanking Statement Credit Assessment Report and Red Flag Variation Request prepared by EcoLogical (February 2017).

Amended Deferred Commencement Condition

Deleted

Existing Condition 8

Evidence that the required biobank credits, for impacts on ecological values resulting from vegetation removal, have been retired must be submitted to the Certifying Authority **prior to issue of the Construction Certificate.**

Amended Condition 8

Evidence that the required biobank credits, for impacts on ecological values resulting from vegetation removal, have been retired must be submitted to the Certifying Authority **prior to issue of the Occupation Certificate.**

DETERMINATION

The modification application is recommended to be approved under delegated authority, subject to amended conditions as shown above.

REAN LOURENS

Senior Development Planner



Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

SCHEDULE 1

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref.	Date	Drawn By
Proposed Car Parking Area & Playground Extension (1 Sheet)	425-S01R10	23/03/2017	Ian Easton Architect
Proposed Carpark (1 Sheet)	US 60306 LP.01B	May 2016	Forum Urban Sanctum Landscape Design

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of works**, the person having the benefit of this consent must submit to Council's Natural Resources Management Unit a

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Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

Construction Environmental Management Plan (CEMP) for approval. The CEMP shall be prepared by a suitably qualified company or equivalent.

The CEMP must include measures to protect, enhance and manage the ecological values of the adjacent adjoining biobank site including management of retained vegetation, koala habitat, waterbodies, weed management and bushfire hazard management.

The CEMP shall include the following:

- a. exclusion fencing or similar to minimise clearance of native vegetation within the buffer area to the wetland, to define the 'no go' area, and to protect native vegetation within 100 Salamander Way biobank site
 - b. erosion and sediment control to manage exposed soil surfaces and stockpiles to prevent sediment discharge into waterways and adjoining native vegetation within 100 Salamander Way biobank site
 - c. Strategies for restoration of exposed soils including commencing revegetation as soon as practicable, use of brush and encouragement of natural regeneration from the soil seed bank,
 - d. proposed weed control methods;
 - e. where planting is required, detail of the proposed species, planting densities and source of planting stock and mulch;
 - f. pre-clearance surveys by a suitably qualified ecologist including marking of all koala feed trees
 - g. pre-felling procedures – all potential koala feed trees must be checked to ensure that no koalas are present prior to felling. If any koalas are present, clearing must cease until the koala has moved on
 - h. Documentary evidence of this pre-clearance faunal survey and any recommendations are to be provided to and acknowledged by Council's Natural Resources Management Unit
 - i. If the pre-clearance fauna survey identifies there are threatened species inhabiting a tree flagged for removal; all clearing works shall cease until a Plan of Management for the relocation of the species has been approved by Council's Natural Resources Management Unit in consultation with the Office of Environment and Heritage.
4. **Prior to the commencement of works**, erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).
5. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.

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Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the S94A contribution is to be accompanied by a Cost Summary Report Form (attached) setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council prior to issue of the Construction Certificate. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors. This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount shall apply to Development Applications as follows:

Building work only - **prior to issue of the Construction Certificate.**

7. **Prior to the issue of a Construction Certificate**, a geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works an ASS Management Plan is to be prepared by a suitably qualified engineer and submitted to the Certifying Authority for approval. The recommendations and/or mitigation measures contained within the Acid Sulfate Soils (ASS) Management Plan shall be complied with during works.
- 8A. Evidence that the required biobank credits, for impacts on ecological values resulting from vegetation removal, have been retired must be submitted to the Certifying Authority **prior to issue of the Occupation Certificate.**
9. The shared vehicle driveways, internal traffic aisles, pick up and drop off areas shall have a width to cater for design vehicle paths determined by Australian Standard AS2890 into and out of assigned parking spaces. This requirement will be met by providing vehicle swept paths utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking. Additional vehicle swept paths



Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

are required for the proposed bus route utilising turning circles for the 14.5m rigid bus turning templates.

A Construction Certificate cannot be issued until full details of the driveway and internal traffic aisles have been supplied to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

10. The driveways, carparks and other ground level hardstand areas shall be graded to the street drainage network where practical or so that water runoff is shed to the approved stormwater drainage system. All ground surface collected stormwater overflows shall be dispersed as sheet flow at ground level in a manner that does not create concentrated or nuisance flows for nearby buildings or neighbouring properties.

The Construction Certificate cannot be issued until full details of driveway/carpark/hardstand area grading are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

11. The proposed permeable paving system, shall be installed, as per the manufacturer's specifications, across all approved hardstand areas in accordance with the approved plans. The permeable paving system shall be constructed and maintained so as to ensure permeability, allowing stormwater to infiltrate across its service, for the life of the development.

The Construction Certificate cannot be issued until full details of permeable paving methods are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

12. The following details of the stormwater drainage system conveyed to a Council approved point of discharge, are required prior to the issue of any Construction Certificate:
 - a. A detailed on site infiltration plan shall be prepared by a suitably qualified and experienced engineer to adequately infiltrate ground surface collected stormwater for all storm events up to and including the 1% Annual Exceedance Probability (AEP) event.
 - b. The design shall include details of the location (including levels), type and size of infiltration/detention systems, orifice, roof guttering (with gutter guards to prevent blockage), downpipes, pipes, pits and the boundary discharge point to the public drainage system for any system overflows.
 - c. Complete design calculations are to be provided demonstrating the system's capacity to contain/infiltrate concentrated stormwater run-off, via guttering and pipes suitably sized, with any emergency overflows to be directed to adjoining wetland.
13. Detailed engineering plans shall be submitted to Council or an accredited Private Certifier (with the appropriate category of accreditation) for approval **prior to issue of the Construction Certificate**.

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Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

The details shall be in accordance with this consent, the BCA, Council's Design and Construction Specifications, policies and standards, as a minimum and include but are not limited to:

- a. Structural details for any concrete or masonry drainage structures designed to withstand loadings from the design vehicle; and
- b. Structural details for boundary retaining walls.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

14. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of the Certifying Authority.
15. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Saturday, 7am to 5pm;
 - no construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

16. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
17. Civil Works within the development site are subject to:
 - a. inspection by Council, or the Certifying Authority;
 - b. testing by a registered NATA Laboratory; and
 - c. Approval by Council or the Certifying Authority at each construction stage as determined by Council's Design and Construction Specification, policies and standards.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

18. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to issue of the Occupation Certificate.**

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Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

19. Submission of Works-As-Executed plans and accompanying report prepared and certified by a suitably qualified hydraulic engineer confirming all stormwater drainage systems are constructed in accordance with the approved plan.

Minor variations can be accepted providing they are clearly identified in the report and the hydraulic engineer certifies that site flow up to the 1% annual exceedance probability (AEP) rainfall event are conveyed from all roof areas on site to a **legal point of discharge**.

An Occupation Certificate cannot be issued until the Works-As-Executed plans and accompanying reports have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

20. **Prior to the issue of a Final Occupation**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for infiltration and pollution control devices and porous pavements, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.
21. **Prior to the issue of a Final Occupation**, all disturbed public footpath areas shall be reinstated with graded compacted topsoil and turfed to the satisfaction of Council. Smooth transitions shall be made with adjoining property frontages and the top-soiling and grassing extended to suit.
22. **Prior to the issue of any Occupation Certificate**, 'No Parking' signage is to be installed at the access to the realigned bushfire trail connecting to the south-eastern end of the car park. The signage is to be so installed as to ensure access to the bushfire trail for emergency services vehicles at all time.
23. The applicant shall restore, replace or reconstruct any damaged sections of kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve which results from construction activities, as determined by Council's Development Engineers or Civil Assets Engineer. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.

An Occupancy Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council.

CONDITIONS TO BE SATISFIED AT ALL TIMES

24. All ground surface collected stormwater overflows shall be dispersed as sheet flow at ground level in a manner that does not create concentrated or nuisance flows for nearby buildings or neighbouring properties.
25. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.

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**PORT STEPHENS
COUNCIL**

Notice of Determination

Under section 80, 80A, 80(1), 81(1)(a) and 96 of the Environmental Planning and Assessment Act 1979.

26. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.
27. Fencing around the carpark should not compromise the potential for safe movement of koalas across the site. Boundary fences must include either:
 - a) Fences where the bottom of the fence is a minimum of 200mm above ground level that would allow koalas to move underneath; or
 - b) Fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
 - c) Open post and rail or post and wire (definitely not barbed wire on the bottom strand).
28. The stormwater management and filtration area is to be managed to ensure:
 - a) no runoff of surface waters into the adjacent biobank site; and
 - b) no impact on water quality of receiving waters within the adjacent biobank site.

SCHEDULE 2

RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

NOTES

- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.

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MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

Councillor Paul Le Mottee left the meeting at 7:10pm in Committee of the Whole.
Councillor Paul Le Mottee left the meeting at 8:53pm in Open Council.

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017 MOTION

310	<p>Mayor Ryan Palmer Councillor Jaimie Abbott</p> <p>It was resolved that Item 3 be brought forward and dealt with prior to Item 2.</p>
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Councillor Ken Jordan left the meeting at 7:11pm in Committee of the Whole.

Councillor Ken Jordan left the meeting at 8:54pm in Open Council.

ITEM NO. 3

FILE NO: 17/209799
RM8 REF NO: PSC2017-00180

PLANNING PROPOSAL – REZONE AND AMEND THE MINIMUM LOT SIZES AT 111 SOUTH STREET (LOT 14 DP1079392) AND 1C SYLVAN AVENUE (LOT 11 DP1105086), MEDOWIE

REPORT OF: MARC GOODALL - ACTING STRATEGY & ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Acknowledge the submissions received during the public exhibition of a proposal to rezone Lot 14 DP 1079392 (111 South Street) and Lot 11 DP 1105086 (1C Sylvan Avenue) (**ATTACHMENT 1**) from R2 Low Density Residential and a Minimum Lot Size of 450sqm to R5 Large Lot Residential and a Minimum Lot Size of 2,000sqm.
 - 2) Adopt an amended proposal (**ATTACHMENT 2**) to amend the Minimum Lot Size for Lot 14 DP 1079392 (111 South Street) and Lot 11 DP 1105086 (1C Sylvan Avenue) from 450sqm to 700sqm to be consistent with Council's resolution of 24 April 2012. No change to the land-use zone is proposed and so the existing R2 Low Density Residential is proposed to be retained.
 - 3) In accordance with the *Environmental Planning and Assessment Act (s56) (NSW)*, forward the proposal to the NSW Department of Planning and Environment with a request for a revised gateway determination to place the matter on public exhibition for a minimum period of 28 days.
 - 4) Following public exhibition, report this matter back to Council for their endorsement, subject to consideration of submissions.
-

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Glen Dunkley That the recommendation be adopted.
--	--

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Glen Dunkley and John Nell.

Those against the Motion: Crs Jaimie Abbott, Giacomo Arnott, Sarah Smith and Steve Tucker.

The motion was lost.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

	Councillor Steve Tucker Councillor Giacomo Arnott That Council: 1) Acknowledge the submissions received during the public exhibition of a proposal to rezone Lot 14, DP 1079392 (111 South St) and Lot 11, DP 110 (1C Sylvan Avenue) (ATTACHMENT 1) from R2 Low Density Residential and a Minimum Lot Size of 2,000sqm. 2) Adopt the proposal as publicly exhibited and in accordance with the <i>Environmental Planning and Assessment Act 1979</i> (s59) (NSW) and forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the Port Stephens Local Environmental Plan 2013 to implement the proposal.
--	--

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott, Sarah Smith and Steve Tucker.

Those against the Motion: Mayor Ryan Palmer, Crs Glen Dunkley and John Nell.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

311	Councillor Steve Tucker Councillor Glen Dunkley It was resolved that Council: 1) Acknowledge the submissions received during the public exhibition of a proposal to rezone Lot 14, DP 1079392 (111 South St) and Lot 11, DP 110 (1C Sylvan Avenue) (ATTACHMENT 1) from R2 Low Density Residential and a Minimum Lot Size of 2,000sqm. 2) Adopt the proposal as publicly exhibited and in accordance with the Environmental Planning and Assessment Act 1979 (s59) (NSW) and forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the Port Stephens Local Environmental Plan 2013 to implement the proposal.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott, Sarah Smith and Steve Tucker

Those against the Motion: Mayor Ryan Palmer, Crs Glen Dunkley and John Nell.

BACKGROUND

The purpose of this report is to consider submissions received during public exhibition of a proposal to rezone land at South Street and Sylvan Avenue from R2 Low Density Residential and a Minimum Lot Size (MLS) of 450sqm to R5 Large Lot Residential and a MLS of 2,000sqm.

A summary of the proposal that was placed on public exhibition is as follows:

Proponent:	Council (Notice of Motion dated 24 April 2012)
Subject Land:	Lot 14 DP 1079392 (111 South Street); and Lot 11 DP 1105086 (1C Sylvan Avenue)
Existing Zoning:	R2 Low Density Residential
Existing Minimum Lot Size:	450sqm
Proposed Zone:	R5 Large Lot Residential
Proposed Minimum Lot Size:	2,000sqm

This exhibited proposal was the outcome of a Notice of Motion (NoM) that was passed at the 9 May 2017 Council Meeting, being:

“Council commence the process of rezoning 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) from the current surrounding zoning and prevents subdivision into smaller lots, creating traffic parking hazards that have a significant impact on the amenity and streetscape of the surrounding area”.

Following this NoM, a proposal was prepared and sent to the Department of Planning and Environment seeking a gateway determination for public exhibition. This was provided on 7 August 2017. Public consultation then took place for 14 days from 26 October 2017. During this period, 74 submissions were received. 55 were in favour of and 19 were opposed to the proposal.

A detailed summary of submissions and an appropriate planning response is provided as **(ATTACHMENT 1)**.

Based on these submissions and a planning review, it is recommended that the exhibited proposal be amended to decrease the MLS from 2,000sqm to 700sqm and retain the existing R2 Low Density Residential zone based on the following reasons:

- To correct an administration error. The resolution provided by Council on 24 April 2012 intended for the zone to be R2 Low Density Residential and a MLS of 700sqm. This is clearly stipulated in the resolution and the planning proposal.
- To provide certainty and equity. An objective of planning controls is to provide certainty for both the existing community and potential investors. If a site has subdivision potential, this impacts its market value. Back zoning land (currently proposed) reduces confidence for investment and the certainty of the community to understand that their land could be back zoned in the absence of a Strategic Plan. For these reasons, back zoning is largely discouraged across NSW.
- To provide a MLS that allows the existing lots to be subdivided, which promotes building form on a corner lot with frontage to both streets. This activates both street frontages for surveillance and is a desirable urban design outcome.
- To provide an effective transition from existing lots to the south that range from 200sqm to 600sqm in Pacific Dunes to the existing lots to the north, being 2,000sqm.
- A density of two detached dwellings (i.e. dual occupancy in R5 Large Lot Residential) is achievable on the existing site and those to the north under the Port Stephens Local Environmental Plan 2013 (c4.1B).
- A MLS of 700sqm is unlikely to create significant parking hazards. The Port Stephens Development Control Plan 2014 requires development applications to provide on-site parking and traffic assessments to address traffic and parking matters.

Based on these reasons, it is recommended that Council support an amended proposal that is inconsistent with their NoM and the gateway determination. The Department of Planning and Environment have advised that because the recommendation differs from the proposal that was placed on public exhibition, that a revised gateway determination will need to be requested. This gateway determination

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will determine the public exhibition requirements. Should Council wish to proceed with the proposal as publically exhibited, then they could resolve to:

- 1) Acknowledge the submissions received during the public exhibition of a proposal to rezone Lot 14, DP 1079392 (111 South St) and Lot 11, DP 110 (1C Sylvan Avenue) (ATTACHMENT 1) from R2 Low Density Residential and a Minimum Lot Size of 2,000sqm.
- 2) Adopt the proposal as publicly exhibited and in accordance with the Environmental Planning and Assessment Act 1979 (s59) (NSW) and forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the Port Stephens Local Environmental Plan 2013 to implement the proposal.

Whilst this recommendation is not recommended, should this approach be taken, Council does not have delegation to determine this proposal under the *Environmental Planning and Assessment Act 1979 (s56(2)) (NSW)* and in turn the proposal will be sent back to the Department of Planning and Environment for final consideration by the Minister.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

As this proposal is the result of a Notice of Motion, no rezoning fees have been paid.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONSEnvironmental Planning and Assessment Act 1979

Council is the relevant planning authority under the *Environmental Planning and Assessment Act 1979 (NSW)*. The proposal has followed the process for amending a local environmental plan under this Act, which is detailed by the following table:

EP& A Act 1979	Date	Comment
S55 Planning Proposal	13 July 2017	
S56 Gateway Determination	7 August 2017	
S57 Community Consultation	November 2017	
S58 Relevant planning Authority to vary or proceed		Subject of Council Resolution
S59 Making of Plan		Subject of Council Resolution

Port Stephens Local Environmental Plan 2013

The proposal will amend the Minimum Lot Size for the subject land from 450sqm to 700sqm. No change to the land-use zone is proposed.

Medowie Planning Strategy

The Medowie Planning Strategy (the strategy), which includes a town centre master plan was adopted by Council in December 2016. The strategy provides broad principles. It does not specially identify or consider the subject site in detail. The proposal is not considered to be inconsistent with the strategy.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the process for amending the Local Environmental Plan is not followed.	Low	The proposal has followed the process for amending a Local Environmental Plan, as detailed under the Act.	Yes
There is a risk that the community does not feel that they have enough time to make an informed comment.	Low	The proposal has been placed on public exhibition in accordance with the gateway determination.	Yes
There is a risk that the recommendation is not consistent with the gateway determination.	Low	Seek a revised gateway determination from the Department of Planning and Environment.	

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section. The objective was to notify the public to gain their opinions on the proposal prior to its final consideration by Council.

Internal

The proposal does not involve the potential for significant land clearing, infrastructure demands or detention to manage drainage. As stated by the gateway determination, the proposal is 'low impact' and in turn, relevant matters can be addressed at the development application stage.

External

The proposal was placed on public exhibition from 26 October 2017 to 9 November 2017. A detailed summary of submissions and an appropriate planning response is provided as (**ATTACHMENT 1**).

The top five key matters and a planning response are provided by the following table.

No	Key matter	Planning response
1	Increased traffic impact.	The rezoning process is unlikely to create traffic or parking hazards. At the development application stage, adequate on-site parking is to be provided in accordance with the Port Stephens Development Control Plan 2014. A traffic impact assessment will be requested if traffic impacts are of concern to assessing officers.
2	Changes to the streetscape and amenity will potentially de-value the properties in the area.	The proposal will likely promote a building form on corner lots with frontage to both streets. This activates both street frontages for surveillance. This is believed to be an improved design outcome.
3	Consistency with lots zoned R5 Large Lot Residential with MLS of 2000m ² to the north.	The proposal will provide an effective transition from existing lots to the south that range from 200m ² to 600m ² in Pacific Dunes to the existing lots to the north that are 2,000m ² .
4	The DA and Planning Proposal being presented at the same Council Meeting.	Although the proposal and the DA for 1C Sylvan Ave will both be reported at the 12 December 2017 meeting, they will be reported separately. Each matter will be considered on their own merit.

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No	Key matter	Planning response
5	Public Safety – bus stop and childcare centre.	The rezoning process will not create significant safety hazards. At the development application stage, adequate on-site parking is to be provided in accordance with the Port Stephens Development Control Plan 2014.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Submissions Summary Table.
- 2) Planning Proposal.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

SUBMISSION SUMMARY AND PLANNING RESPONSE

Submission	Summary of Submission	Response
1.	<p>a. Supports the planning proposal.</p> <p>b. The planning proposal should be finalised prior to consideration of the application to subdivide 1C Sylvan Avenue.</p> <p>c. It is widely acknowledged that the rezoning to R2 was a mistake caused by lack of consultation; internally within Council management and ultimately to Councillors, and a lack of responsibility by the <i>Pacific Dunes</i> proponent, who failed to consult with Council on the R5 use of the subject land prior to it being integrated into the planning proposal. As a result, there was a systematic failure in ensuring audit and process procedures pre planning-approval that would have otherwise identified anomalies prior to gazettal.</p> <p>d. This flawed process began with the ultimate approval of a dwelling on 111 South Street that suited the existing R5 zone and then rezoning the land in error to R2, even though it sat outside of the proposed LEP boundaries of Pacific Dunes.</p> <p>e. The rezoning was ad hoc and outside of any framework or stated wider community planning consideration. Council did not undertake due diligence by failing to recognise that the subject land was outside of the Pacific Dunes Planning Proposal.</p> <p>f. The subject land is not part of the Pacific Dunes Estate and should not have been rezoned for higher density.</p> <p>g. The DA on 111 South St was approved with an orientation to South St rather than Sylvan as was originally envisaged in the Sylvan Ridge subdivision layout.</p> <p>h. Council also failed to identify the concurrent error in the anomaly of lot size designation between 450m² and 700m², leading to potential impacts on adjoining properties, such as a loss of amenity and value.</p> <p>i. Council failed to undertake appropriate action to rectify the matter between August 2013 to the May 9 2017 Notice of Motion.</p>	<p>a. Noted.</p> <p>b. Although the proposal and the DA for 1C Sylvan Ave will both be reported at the 12 Dec 2017 meeting, they will be reported separately. Each matter will be considered on their own merit.</p> <p>c. During the assessment of the Pacific Dunes Planning Proposal, Council staff was aware that the subject land formed part of the proposal and the inclusion of this land was clearly outlined in the Planning Proposal that Council resolved to support on 24 April 2012, which stated: <i>'a. Rezone Part Lot 98, DP 280007, Lot 7, DP 270438, Lot 10, DP 270438, Part of Lot 9, DP 270438, Part of Lot 11, DP 1079392, Lot 11, DP 1105086 and Lot 14, DP 1079392 to 2(a) Residential</i> <i>b. Apply the minimum allotment size for the above allotments as detailed in the Planning Proposal' (p.76).</i> An error that occurred was an administrative one, whereby the minimum lot size that resulted was 450m², when the intent was clearly a minimum lot size of 700m².</p> <p>d. The siting of the dwelling on 111 South Street is outside of the scope of the Planning Proposal. The Pacific Dunes Planning Proposal included the subject land, with the intention of installing a minimum lot size of 700m² and was exhibited as such. An error did however occur when the <i>Port Stephens Local Environmental Plan 2013</i> was gazetted and the subject land was allocated a minimum lot size of 450m².</p> <p>e. See comment 1.c</p> <p>f. See comment 1.c</p> <p>g. See comment 1.d</p> <p>h. See comment 1.c</p> <p>i. Noted.</p>

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ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	<ul style="list-style-type: none"> j. Council's inaction, and reliance on a reactive process, resulted in the lodgement of an opportune subdivision application on 111 South St, requiring Council to belatedly take action to rectify the anomalies when it was far too late. k. Council's existing DCP at the time, was inefficient and aided and abetted the fiasco. l. However, Council is now to be congratulated that it has at last publically acknowledged the error and is moving to prevent further subdivision which would diminish the desired streetscape of the majority R5 zonings as well as compound the dangerous traffic problems that would result. m. Risk analysis should be undertaken to ensure future errors are not experienced. n. Local and State planning authorities will benefit from the proposed reversion to the previous R5 zone. 	<ul style="list-style-type: none"> j. The subdivision of 111 South Street is consistent with the existing <i>Port Stephens Local Environmental Plan 2013</i>. k. Noted. l. Noted. However it is recommended to amend the planning proposal so that the R2 zone is retained and a minimum lot size of 700m² is attributed to the subject land. m. Noted. n. Noted.
2.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The original R5 zoning will maintain the overall appeal of large blocks on South Street and Sylvan Ave. 	<ul style="list-style-type: none"> a. Noted. b. Noted.
3.	<ul style="list-style-type: none"> a. Supported the planning proposal. b. The original R5 zoning will maintain the overall appeal of large blocks on South Street and Sylvan Ave. 	<ul style="list-style-type: none"> a. Noted. b. Noted.
4.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The sites are not suitable for development given the traffic impacts and location. 	<ul style="list-style-type: none"> a. Noted. b. The rezoning process will not create traffic or parking hazards. At the development application stage, adequate on-site parking is to be provided in accordance with the Port Stephens Development Control Plan 2014. A traffic impact

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ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
		assessment will be requested if traffic impacts are of concern to assessing officers.
5.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The rezoning was a mistake to begin with. Council needs to address this error by going back to larger lot size, which is the attraction of the area. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.d
6.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. There are 350+ blocks zoned R5 in Sylvan Ridge Estate, giving it a rural character, containing large houses and privacy from neighbours. This is the reason most residents purchased in the Estate. c. The administrative error has caused disharmony within the community needs to be corrected. d. The owners did not apply to have the land rezoned and the land has never been part of the Pacific Dunes community title. The planning proposal for Pacific Dunes is misleading and does not include 111 South St and 1C Sylvan Ave. e. Councillors have admitted to being unaware that they were voting to have this land rezoned. f. The DA for a subdivision at 1C Sylvan Ave should be considered after the current planning proposal is resolved. g. If the subdivision at 1C Sylvan Ave is approved, it will cause more traffic congestion at the entrance of the estate and at the driveway to the childcare centre. An additional dwelling will further exacerbate this problem. h. The proposal for the rezoning notes that the Department of Planning & Environment and the Department of Defence supports the planning proposal and the admittance of Council that the subject land was zoned in error, should encourage the new councillors to support the planning proposal. i. Council should consider placing a covenant over the land in the Sylvan Ridge Estate so that lots must be of a minimum 2000m². 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comment 1.d d. See comment 1.c e. See comment 1.c f. See comment 1.b g. See comment 4.b h. Noted. The Gateway determination issued by the Department of Planning & Environment allows Council to undertake further strategic planning into the matter, and it is not unusual for a planning proposal to be amended as a result of this work. The proposal was the result of a Notice of Motion (NoM) and in turn, that further strategic background has been provided and a recommendation to admin the existing administrative error is proposed. i. The minimum lot size of land is determined by the Local Environmental Plan, not by a section 88B covenant.
7.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The subject land was purchased by owners as an R5 large lot with a minimum lot size of 2000m² and it was still zoned 	<ul style="list-style-type: none"> a. Noted. b. Noted. However this is not relevant to the planning proposal. See comment 1.c

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Submission	Summary of Submission	Response
	<p>R5 when houses were built. Then due to a lack of information in the Pacific Dunes planning proposal in 2012, the land "slipped under the radar" and councillors voted unanimously to approve the Pacific Dunes rezoning proposal.</p> <p>c. Previous councillors and some of those re-elected have admitted that the rezoning of these two blocks was a mistake. On the 28th March 2017 when opposing the proposed subdivision at 111 South St, Cr Steve Tucker apologised to the gallery for the mistake of not realising that the subject land was rezoned as part of the Pacific Dunes Community Title, which they are not.</p> <p>d. On the 11th July 2017 Councillors refused the proposed subdivision of 111 South St, followed by a refusal to rezone number 74 South St; Sylvan Ridge Estate residents were delighted by this outcome.</p> <p>e. If the planning proposal is not supported, future development of the site will have significant effect on the surrounding houses including devaluation, loss of privacy and increased traffic in an already congested area.</p> <p>f. Requests that the errors are rectified.</p>	<p>c. See comment 1.c</p> <p>d. Noted.</p> <p>e. The recommended amendments to the planning proposal will promote a building form on a corner lot with frontage to both streets. This activates both street frontages for surveillance. This is believed to be an improved design outcome. There is no evidence to suggest that property values will be impacted by an amended planning proposal.</p> <p>f. Noted.</p>
8.	<p>a. Supports the planning proposal.</p> <p>b. The subject land was rezoned in error as it was not part of the Pacific Dunes Estate. Councillors have admitted this mistake.</p> <p>c. Maps included in the Pacific Dunes planning proposal do not identify the subject land.</p> <p>d. Pacific Dunes sold the subject land when it was zoned R5 and 1C Sylvan as a 3029m2 lot and 111 South as a 2262m2 despite admitting that they were seeking a higher yield.</p> <p>e. The owners of the subject land both purchased their land and built their homes when it was zoned R5. Neither land holder applied to have their land rezoned nor did they pay any rezoning fees. Supporting the planning proposal will rectify an error at no cost to the owners.</p> <p>f. The planning proposal, which is consistent with Council's Notice of Motion, should be finalised prior to consideration of</p>	<p>a. Noted.</p> <p>b. See comment 1.c</p> <p>c. See comment 1.c</p> <p>d. Noted. However, this is not relevant to the planning proposal.</p> <p>e. See comment 1.d</p> <p>f. See comment 1.b</p>

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ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	the DA on 1C Sylvan Ave.	
9.	Supports the planning proposal.	Noted.
10.	Supports the planning proposal.	Noted.
11.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The land was rezoned in error and rectifying this will enable Council to maintain integrity. c. Concerned that not supporting the planning proposal will result in precedent being set and other large lots will be rezoned, significantly impacting on the appealing character of the area. d. Additional development in this already congested intersection will create additional traffic problems and reduce safety. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.i c. Planning Proposals for individual sites are considered on their merit. A proponent has the ability to formally request that Council prepare a planning proposal under the <i>Environmental Planning and Assessment Act 1979</i>. d. See comment 4.b
12.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Attracted to the large lot character of the area. c. These lots are part of the Sylvan Ridge Estate, which were all intended to have a minimum lot size of 2000m². They were rezoned to R2 in error. Councillors have admitted that they were unaware that they were voting for the rezoning of the subject land. d. If residents have been notified during the preparation of the <i>Port Stephens Local Environmental Plan 2013</i>, this error would not have happened. 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comment 1.c d. Extensive community consultation was undertaken at the time of the Pacific Dunes Planning Proposal and during the preparation of the <i>Port Stephens Local Environmental Plan 2013</i>. At the time, community consultation requirements for rezoning proposals under the <i>Environmental Planning and Assessment Act 1979</i> do not require neighbours to be notified. Council have since passed a local requirement for neighbours to be notified of planning proposals.
13.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Rezoning the land back to R5 will ensure consistency with the original concept of the area. c. Increased density in the area will lead to further traffic congestion and is a public safety issue. 	<ul style="list-style-type: none"> a. Noted. b. See comment 7.e c. See comment 4.b
14.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The subject land should not be zoned differently to the other 355 lots in the Estate simply due to an administrative error. c. The planning proposal will prevent any subdivision of the 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.c c. See comments 7.e and 11.c

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ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	<p>subject land. If the subject land is subdivided, a precedent to allow further subdivisions within the estate will be set, and this will destroy the amenity of Sylvan Ridge Estate.</p> <p>d. Allowing the subject land to be subdivided will devalue property.</p> <p>e. The subject land was rezoned in error as part of the Pacific Dunes Estate and this error needs to be rectified.</p> <p>f. Subdivision of the subject land will add traffic to an already busy and dangerous traffic congested area.</p>	<p>d. See comment 7.e</p> <p>e. See comment 1.c</p> <p>f. See comment 4.b</p>
15.	Supports the planning proposal.	Noted.
16.	<p>a. Supports the planning proposal.</p> <p>b. Congratulates Council on rectifying an administration error that lead to the rezoning of the subject land. Believes that support of the planning proposal will enable council to restore faith back in the community.</p> <p>c. Should Council resolve not to support the planning proposal, it will set a precedent for further subdivision in the area.</p> <p>d. The R2 zoning of the subject land has outraged the community of the Sylvan Ridge Estate, which is considered to be prestigious. It is inappropriate that land at the entrance of the estate was rezoned without land holders applying and paying fees.</p> <p>e. Future subdivision will impact property value.</p> <p>f. Given that the property owners did not pay for the rezoning, they will not be financially disadvantaged from the proposal to rezone the land back to R5.</p> <p>g. These 2 blocks are not suitable for anymore development due to their location and traffic impacts. This area is already extremely dangerous particularly at peak times.</p> <p>h. Previous councillors and some of the re-elected ones have admitted it was a mistake and they were unaware of the rezoning.</p>	<p>a. Noted.</p> <p>b. See comment 1.l</p> <p>c. See comment 11.c</p> <p>d. Noted. See comment 7.e</p> <p>e. See comment 7.e</p> <p>f. Noted.</p> <p>g. See comment 4.b</p> <p>h. See comment 1.c</p>
17.	<p>a. Objects to the planning proposal.</p> <p>b. Looking to invest in an estate such as Pacific Dunes. They</p>	<p>a. Objection to the proposal</p> <p>b. Noted.</p>

ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	<p>are concerned that land can be rezoned after a dwelling is built on the land, and this is a disincentive for investment.</p> <p>c. Since Pacific Dunes was first proposed, a number of changes have occurred, including the expansion of the built up sites and playground structures to benefit the local community. Over this period traffic concerns have not been experienced.</p> <p>d. There is no justification for the subject land to be rezoned to R5.</p> <p>e. The R5 zoning will not prevent development for uses such as granny flats or dual occupancy, without subdividing.</p> <p>f. The 2000m² minimum lot size did not prevent the development of three dual occupancies on a neighbouring property on Sylvan Avenue and it will not impede development of the subject land.</p> <p>g. The planning proposal to change the zoning is unnecessary and it will not restrict future development.</p>	<p>c. Noted.</p> <p>d. Noted.</p> <p>e. Agree. Dual occupancies and secondary dwellings are a permissible use in the R5 zone. As such, even if the subject land is rezoned R5 and has a minimum lot size of 2000m², additional dwellings could be constructed.</p> <p>f. Agree. See comment 17.e</p> <p>g. Noted.</p>
18.	<p>a. Objects to the planning proposal.</p> <p>b. The subject land is currently zoned R2. Prior to purchase of 111 South Street, the owners held a number of discussions with Council regarding their intention to subdivide the Lot into two lots with a lot size of 700m² each. The owners had discussed their subdivision plans with Council for a period extending over 12 to 18 months prior to the lodgement of their subdivision application.</p> <p>c. Council advised that it would support a subdivision of 700m². The Lot was purchased based upon Council's advice. Subsequent to the owners' purchase of the Lot, Council expressed an intention to revise its initial proposal so as to increase the allowable lot size of a subdivision to 2000m², to the detriment of the owners. If the planning proposal is supported, the owners would effectively be prevented from subdividing the Lot as intended.</p> <p>d. The proposed revision by Council is considered unjust. At no time did Council raise any objection to a proposed lot size of 700m² or did they express an intention to accept only a minimum lot size of 2000m². The Lot is located at a corner</p>	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. This advice was based on the existing zone and minimum lot size. Council has the ability to amend the zone and minimum lot size through the planning proposal process.</p> <p>d. Noted. The zone and minimum lot size of 700m² was considered as part of the Pacific Dunes Planning Proposal.</p> <p>e. Noted. See comments 4.b and 7.e</p> <p>f. See comment 4.b</p> <p>g. See comment 6.g</p> <p>h. The proposal will provide a transition from existing lots to the south that range from 200m² to 600m² in Pacific Dunes to the existing lots to the north that are 2,000m².</p> <p>i. Noted. The report recommends that the subject land retains its current R2 zoning with a minimum lot size of 700m².</p>

ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	<p>and naturally suited to the proposed subdivision of 700m². At no time did Council express any concern about the incompatibility of the Lot to a subdivision of 700m².</p> <p>e. Council has not provided a suitable justification for the proposed rezoning. At no time has Council presented to the owners any document, report or outcome of a strategy or investigation indicating the necessity of the revision. Council alleges that the proposed revision would:</p> <p>“...provide consistencies with surrounding zoning and prevent subdivision into smaller lots, creating traffic parking hazards that have a significant impact on the amenity and streetscape of the surrounding area”.</p> <p>f. However, this statement is not supported by objective evidence. There have been two recent traffic assessments, one of which conducted by way of an independent review, that both concluded that the subdivision of the Lot with a minimum lot size of 700m² will not present any traffic or parking hazards.</p> <p>g. A lot size of 700m² would provide ample space for a dwelling with a double garage and sizeable driveway, well capable of supporting off-street parking. There is simply no basis to such an assumption. It is a fallacy to associate a larger lot size with an increase of traffic or parking hazards.</p> <p>h. A subdivision of 700m² would be consistent with the dwellings opposite the subject land, which are approximately 600m², all of which contain double garages and ample off street parking. At no time has Council raised any parking or traffic concerns in relation to these dwellings. There would be no perceivable impact on the amenity and streetscape of the area surrounding the subject land if a subdivision of 700m² is approved.</p> <p>i. The issue should be resolved in accordance with the initial proposal of the LEP 2013, having consideration for the landholders who purchased the property relying on Council advice.</p>	

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Submission	Summary of Submission	Response
19.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Sylvan Ridge Estate was and has always been intended as large R5 lots. Council admitted mistake in rezoning the subject land and this error needs to be rectified in order to maintain the amenity of the estate. c. There are 355 R5 zoned blocks of land within this estate and there is nothing unique about the subject land for it to be zoned R2. d. The Planning Proposal Pacific Dunes Estate Meadowie is deceptive and misleading and does not document the rezoning of the subject land. e. Councillors have admitted to being unaware that the subject land was being rezoned as part of the Pacific Dunes estate. f. The subject land is not part of the Pacific Dunes Community title and therefore should have never been part of the Pacific Dunes rezoning application. g. The subject land was sold and houses were built while the land was zoned R5. The owners did not apply to have their land rezoned and they did not pay any fees. As such, they would not suffer any financial loss to have them zoned back to R5. h. A DA was submitted for 1C Sylvan Ave after Council's Notice of Motion on the 9th May 2017 which seeks to rezone the land back to R5. The DA to subdivide 1C Sylvan Ave should be rejected on the basis that the owner purchased a 3029m² lot and the Pacific Dunes rezoning was exhibited eight months after the proponent purchased their land and the rezoning was not finalised until 18 months after settlement. i. There have been 47 submissions opposing the 1C Sylvan Ave subdivision and Councillors voted not to support the DA to subdivide 111 South St in July of this year. j. The DA to subdivide 1C Sylvan Avenue should not occur until after the planning proposal is finalised. k. The Department of Planning supported the planning proposal through the Gateway process. l. The subject land is not suitable for development as it would 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.c c. See comment 18.h d. See comment 1.c e. See comment 1.c f. See comment 1.c g. Noted. h. See comment 8.d i. Noted. j. See comment 1.b k. See comment 6.h l. See comment 7.e

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ITEM 3 - ATTACHMENT 1 SUBMISSIONS SUMMARY TABLE.

Submission	Summary of Submission	Response
	have unacceptable impacts of the surrounding area.	
20.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Questions Council's agenda and competence in allowing the rezoning anomaly to occur. c. The planning proposal makes sense as it will rectify an error. d. There is significant justification for supporting the planning proposal. 	<ul style="list-style-type: none"> a. Noted. b. Noted. See comment 1.c c. See comment 1.c d. Noted.
21.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. When purchasing property in the year 2000, it was advised that the area would maintain its rural character as this was the original mission statement of the Golf Course. c. Subdivision of the subject land would add to traffic congestion and further exacerbate dangerous traffic conditions in the area. d. Maintaining the R2 zone and allowing subdivision would set a precedent and lead to further subdivision, inconsistent with the original mission statement. 	<ul style="list-style-type: none"> a. Noted. b. Noted. At any time, land holders are able to submit a planning proposal for council to consider amending the <i>Port Stephens Local Environmental Plan 2013</i> in relation to matters such as the land-use zone or minimum lot size. c. See comment 4.b d. See comment 11.c
22.	As above. Duplicate.	As above.
23.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Sylvan Ridge Estate lots are all zoned R5 and Council made a mistake when they zoned these two lots as R2, which they have admitted was an error. c. The planning proposal should be resolved prior to consideration of the DA on 1C Sylvan Avenue. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.c c. See comment 1.b
24.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. I believe the sub-division of these properties would have a dire effect on the estate thus changing them back to R5 would maintain the original integrity of the estate. 	<ul style="list-style-type: none"> a. Noted. b. See comment 7.e
25.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Attracted to the rural character of the Sylvan Ridge Estate as well as property prices being consistent. c. If the subject land is not rezoned back to R5, the residents in Sylvan Ave and South Street will be affected in the following ways: <ul style="list-style-type: none"> • Decrease property values; 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comments 7.e and 4.b d. See comment 21.b

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	<ul style="list-style-type: none"> Negative effect on the large lot residential aesthetic of the estate as large homes cannot be built on smaller lots, particularly if a precedent is set; Traffic and parking impacts on already congested and dangerous intersection; <p>d. Not supporting the planning proposal would be unfair to existing residents who bought land within the estate with an understanding that it would maintain the large lot character.</p>	
26.	<p>a. Supports the planning proposal.</p> <p>b. The subject land was rezoned to R2 in error but should be zoned R5, which is consistent with the other land in the estate.</p> <p>c. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Avenue.</p>	<p>a. Noted.</p> <p>b. See comments 1.c and 18.h</p> <p>c. See comment 1.b</p>
27.	<p>a. Objects to the planning proposal.</p> <p>b. The planning proposal states that the change is required to make zoning consistent with neighbouring properties. However, a change will actually make the zoning more inconsistent with the other adjacent properties, inconsistent with the Sylvan Ridge Estate and inconsistent with the precinct. It is also inconsistent with the outcomes of the extensive community consultation process in which the zoning of these two properties was supported and unanimously backed by council.</p> <p>c. The extensive community consultation process conducted by Straight Talk showed that "Most owners generally considered lot sizes ranging from 720m² to 900+ m² in Hillside 2D precinct to be appropriate" (Pacific Dunes Master Plan: Summary of Outcomes from Consultation with Owners and Master Plan Response). At this time, neighbours were contacted multiple times advising them of the zoning change, but no issues were raised.</p> <p>d. While the proposal states that the change to zoning will prevent subdivision to smaller lots and prevent traffic issues, given that multi-dwelling housing is still permissible, higher density development of the lots can still occur.</p>	<p>a. Noted.</p> <p>b. See comment 18.h</p> <p>c. Noted.</p> <p>d. Agree. See comment 17.e</p> <p>e. See comments 4.b and 7.e</p> <p>f. Noted.</p>

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	<p>e. The proposed rezoning will not prevent further development of the lots, or perceived traffic and amenity issues as additional dwellings can still be built under the R5 zone.</p> <p>f. This planning proposal is unwarranted and council need to show transparency and ethical standards in its actions in order to limit further scrutiny by independent bodies and possible legal costs to rate payers.</p>	
28.	<p>a. Supports the planning proposal.</p> <p>b. The exhibited planning proposal fails to reference background information that supports the rezoning.</p> <p>c. The planning proposal submitted for the Pacific Dunes estate, Medowie, does not provide documentation supporting the rezoning of the subject land from 1(c5) to R2.</p> <p>d. Council report dated 24 April 2012 under listed amendments to the LEP 2000 states that the subject land shall have a minimum lot size of 720m² rather than 2000m².</p> <p>e. Failing to support the planning proposal threatens the value and amenity of rural residential properties in Medowie as adjoining properties may seek to be included in future planning proposals. The planning proposal fails to address the matter of precedents should it not be supported.</p> <p>f. The maps provided on Page 5 of the planning proposal are distorted which makes them misleading and inadequate to those unfamiliar with the area. They mislead by making the R2 zone appear larger and closer to the subject land and failing to identify the Catholic School site, which, while zoned R2, is not high density housing.</p> <p>g. Reasons for supporting the planning proposal are that:</p> <ul style="list-style-type: none"> The land has been developed in a manner consistent with the large lot zoning. The area available for the erection of a dwelling is insufficient to cater for activities associated with a dwelling, leading to unacceptable amenity impacts, particularly noise, parking and property access. The planning proposal for Pacific Dunes does not refer to the subject land, does not identify it as part of the 	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. See comment 1.c</p> <p>d. See comment 1.c</p> <p>e. See comments 7.e and 11.c</p> <p>f. Noted.</p> <p>g. See comments 18.h, 4.b, 7.e, 6.g and 1.c</p> <p>h. See comment 1.b</p> <p>i. See comment 6.h</p> <p>j. See comment 8.d</p> <p>k. Not relevant to the planning proposal.</p>

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	<p>planning proposal and makes no reference to it being rezoned. Further, the land is not included in accompanying ecology, transport & traffic or soils assessments and no justification is provided to amend the lot size of the subject land.</p> <ul style="list-style-type: none"> • Councilors were allegedly deceived into supporting the inclusion of the subject land in the Pacific Dunes Planning Proposal. • The Planning proposal is consistent with the Notice of Motion dated 9 May 2017. <p>h. An application for the subdivision of 111 South St was refused by Council on 11 July 2017. The planning proposal should be finalised prior to consideration of the application to subdivide 1C Sylvan Avenue.</p> <p>i. The Department of Planning advised that they support the planning proposal and acknowledge that the land was zoned in error.</p> <p>j. It is noted that the current owners purchased the properties prior to the zoning change and were not purchased with the intent to subdivide. This is reflected by current dwelling location and site layouts.</p> <p>k. It is alleged that in November 2017, the owner of 1C Sylvan Ave installed a swimming pool without consent, and over the boundary of the proposed subdivision.</p>	
29.	<p>a. Supports the planning proposal.</p> <p>b. Attracted to the large lot character of Sylvan Ridge.</p> <p>c. Concerned that further subdivision or dual occupancy will lead to further traffic congestion.</p> <p>d. Concerned that the planning proposal will create a precedent and affect the amenity of the estate.</p>	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. See comment 4.b</p> <p>d. See comments 7.e and 11.c</p>
30.	<p>a. Objects to the planning proposal.</p> <p>b. The proposal states that subdividing to smaller lots creates traffic and parking issues impacting amenity however this is not supported by multiple traffic assessments.</p> <p>c. There have been at least 4 separate traffic assessments of these sites and all have been unable to identify any traffic or</p>	<p>a. Noted.</p> <p>b. Agree. See comments 4.b, 6.g and 7.e</p> <p>c. Agree.</p> <p>d. See comment 1.c</p>

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	<p>parking issues created by proposed subdivision.</p> <p>d. Subdivision of these lots in to 3 lots of 700m² has been previously supported by the community, Council and the Department of Planning.</p> <p>e. The administrative error does not need to be rectified as it was already reviewed as part of the LEP 2013 review.</p>	e. Noted.
31.	<p>a. Supports the planning proposal.</p> <p>b. The rezoning will ensure that the zoning of the subject land is consistent with rural large blocks, which is the attraction of the area.</p>	<p>a. Noted.</p> <p>b. Noted. See comment 18.h</p>
32.	<p>a. Objects to the planning proposal.</p> <p>b. Traffic studies conclude that subdivision will not impact on traffic issues.</p> <p>c. The neighbouring property on Sylvan Avenue is zoned R5 and it has been approved with three multi dwellings – a total of six houses. This indicates that Council supports adding properties to this end of Sylvan Avenue and does not see any potential issues with traffic or parking.</p> <p>d. The lots are already cleared and suitable for development. They require no additional infrastructure and make use of already available land. This reduces the need to expand the footprint of Medowie, limiting the damage to Koala habitat, wildlife corridors and established bushland environment on the outskirts of Medowie.</p> <p>e. Given that the land may have been purchased with the intent to subdivide, compensation should be considered if council proceeds with the rezoning.</p>	<p>a. Noted.</p> <p>b. Agree. See comment 4.b</p> <p>c. Noted.</p> <p>d. Agree.</p> <p>e. Council is not required to compensate landholders when a planning proposal changes development potential under the <i>Port Stephens Local Environmental Plan 2013</i>.</p>
33.	<p>a. Supports the planning proposal.</p> <p>b. Concerned about traffic impact of subdivision.</p> <p>c. Purchased their land with an understanding that the area had a minimum lot size of 2000m².</p>	<p>a. Noted.</p> <p>b. See comment 4.b</p> <p>c. See comment 11.c</p>
34.	<p>a. Supports the planning proposal.</p> <p>b. The Sylvan Estate has always intended to be a R5 Large Lot estate with a minimum lot size of 2000m².</p> <p>c. The subject land was rezoned in error and this needs to be rectified.</p>	<p>a. Noted.</p> <p>b. See comment 11.c</p> <p>c. See comment 1.c</p> <p>d. See comment 6.h</p>

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	d. The planning proposal is supported by the Department of Planning through the Gateway determination.	
35.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Attracted to the large 2000m² lots due to separation from neighbours. c. Allowing a 450m² minimum lot size would compromise space and privacy. d. The R2 zoning of the subject land was an error by Council and needs to be rectified. e. Concerned with traffic and noise impacts on the narrow streets of Sylvan Ave and South Street. 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comment 7.e d. See comment 1.c e. See comment 4.b
36.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. Attracted to the large 2000m² lots due to separation from neighbours. c. Allowing a 450m² minimum lot size would compromise space and privacy. d. The R2 zoning of the subject land is inappropriate and unfair to those already invested in the neighbourhood and the residents should not have to suffer from council's mistake. e. Subdivision would create safety concerns associated with traffic and parking issues in the area. 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comment 7.e d. See comments 1.c and 11.c e. See comments 4.b and 6.g
37.	<ul style="list-style-type: none"> a. Objects to the planning proposal. b. The proposal is inconsistent with the Hunter Regional Development plan because it removes the ability to develop the land, removes infill development opportunities and reduces the ability to provide a variety of housing choices. c. The proposal is inconsistent with the Integrated Strategic Plan (Port Stephens 2022) (ISP) because it removes the opportunity to provide "a range of lot sizes and housing types to respond to demographic needs and affordability". d. The proposal is inconsistent with the Port Stephens Planning Strategy 2011-2036 (PSPS) because it prevents the creation of additional housing for the expected population growth 	<ul style="list-style-type: none"> a. Noted. b. Agree. The Hunter Regional Plan seeks to provide a range of housing opportunities, including opportunities for infill development. c. Agree. d. Agree. The proposal would create additional housing in a key growth area. e. Noted. f. Consistency against the relevant s117 Directions are outlined in the planning proposal. g. Council received numerous objections to the development

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	<p>resulting from the Newcastle Airport and other developments.</p> <p>e. The proposal is inconsistent with Medowie Planning Strategy 2016 (MPS) because it restricts urban growth in a desirable area.</p> <p>f. The planning proposal is inconsistent with the following Ministerial Directions:</p> <p>3.1 Residential Zones</p> <ul style="list-style-type: none"> • It does not encourage a variety and choice of housing types to provide for existing and future housing needs • It does not make efficient use of existing infrastructure and services • It does not minimise the impact of residential development on the environment and resource lands • It is not of minor significance due to its location, extensive media attention and prominent location <p>3.4 Integrating Land Use and Transport</p> <ul style="list-style-type: none"> • Does not improve access by walking, cycling and public transport as it removes the capacity to create housing close to bus exchange, proposed school and facilities • Does not reduce dependence on cars as it removes the ability to create affordable housing within walking distance of the proposed school and school bus exchange • Does not reduce travel demand and the distances travelled, especially by car, as removing the ability to infill means future residential development will be further away from Richardson Road - access roads to the Bay, Newcastle and Raymond Terrace where future employment is likely <p>3.5 Development Near Licensed Aerodromes</p> <ul style="list-style-type: none"> • The proposed residential areas are not impacted by noise contours under 2025 ANEC dated 17th May 2010 and 2025 ANEC dated 1st September 2010. Accordingly, development on the land proposed for rezoning is not constrained by aircraft noise. 	<p>applications to subdivide the subject land. As such planning officers are not delegated to approve such applications and in turn were considered by the elected Councillors.</p> <p>h. Noted.</p>

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	<ul style="list-style-type: none"> The Dept of Defence does not have any published policy that would provide an option to object to increasing residential density. <p>4.4 Planning for Bushfire Protection</p> <ul style="list-style-type: none"> The subject sites have been assessed by the Rural Fire Service as part of the Development Application process and the Rural Fire Service supported the subdivision of both lots <p>5.10 Implementation of Regional Plans</p> <ul style="list-style-type: none"> The proposal is inconsistent with this direction It limits the potential for greater housing choices It prevents new housing being provided in established areas through infill development. It is clearly inconsistent with the relevant direction as it blocks the ability to create a compact settlement. <p>g. A conforming development submitted to Council in good faith should be routinely approved by Council.</p> <p>h. Inappropriate for Council to rezone the subject land as a means of stopping the proposed developments. This is not an appropriate expenditure of Council's resources and income.</p>	
38.	<p>a. Supports the planning proposal.</p> <p>b. Preventing subdivision of the subject land will avoid traffic problems on the narrow estate street, which has no provision for off-street parking for visitors.</p> <p>c. Parking is already a significant issue in the area, particularly due to the development of six houses on 1 & 1B Sylvan Ave; a development that the community strongly objected to.</p> <p>d. The proposed subdivision plans for 1C Sylvan Ave are no longer valid as they fail to identify the swimming pool installed on the 4/5th of November. As such, council should not be considering an application that does not have correct plans.</p> <p>e. Council needs to rectify the error so that the amenity of the</p>	<p>a. Noted.</p> <p>b. See comments 4.b and 6.g</p> <p>c. See comment 6.g</p> <p>d. See comment 28.k</p> <p>e. See comments 1.c and 7.e</p> <p>f. Noted.</p> <p>g. See comment 32.e. Also, the proposal was initiated as a result of a Council Notice of Motion. This proposal is not being driven by the landowner, but by Council.</p> <p>h. See comment 7.e</p> <p>i. See comments 7.e</p>

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	<p>neighbourhood is maintained.</p> <p>f. Concerned that the proposed 15m frontage at 111 South Street is not consistent with neighbouring 50m frontage.</p> <p>g. The property owners should not have had their land rezoned without paying council fees and should not be compensated for rezoning back to R5.</p> <p>h. The subject land should be rezoned to R5 in order to maintain the amenity of the estate, which is the reason residents worked hard to invest in the area.</p> <p>i. It is unfair for council to destroy the amenity of the area by changing the vista, streetscape and property value through increased congestive development.</p> <p>j. Additional development on the subject land will affect the privacy and tranquillity of neighbouring property, particularly in conjunction with the 6 houses on 1 & 1B Sylvan Ave.</p> <p>k. Concern that property values will be significantly affected.</p>	<p>j. See comment 7.e</p> <p>k. See comment 7.e</p>
39.	<p>a. Objects to the planning proposal</p> <p>b. In order to rectify the error, the 700m² minimum lot size, as identified in the LEP 2013, should be reinstated as originally intended.</p> <p>c. It is assumed that the subject land was purchased based on their future subdivision potential.</p> <p>d. Siting of the existing dwelling suggests that the owners planned for future subdivision.</p> <p>e. This proposal states that the zoning was re-defined as R2 via a planning proposal dated 24 April 2012 and subsequently, resolved unanimously by Council. The fact that the lot size was 450m² rather than 700m² is the only discrepancy.</p> <p>f. Does not agree that an additional dwelling will have significant traffic impacts.</p>	<p>a. Noted.</p> <p>b. see comment 18.i</p> <p>c. Not relevant to consideration of planning proposal.</p> <p>d. Noted.</p> <p>e. Agree. See comment 1.c</p> <p>f. See comment 4.b</p>
40.	<p>a. Supports the planning proposal.</p> <p>b. Applauds council for seeking to rectify error.</p>	<p>a. Noted.</p> <p>b. See comment 1.l</p> <p>c. Noted.</p>

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	<ul style="list-style-type: none"> c. A history of decisions, both wrong and right, provided. d. Inappropriate that the subject land was included in the planning proposal given that it did not reference an intention to rezone 111 South St or 1c Sylvan Ave e. Due process was not followed as the land was not in a planning proposal and/or land was missed. f. Planning proposal for 111 South Street received Gateway determination very quickly. g. Jan 2017, Councilors admitted to making an error in rezoning the subject land from R5 to R2. Planning staff did not admit error. h. In May 2017 a motion to rezone the subject land from R2 back to R5. Councilors should be congratulated on this Notice of Motion. i. In July 2017 PSC finally rejected the application to subdivide 111 South Street. j. In July 2017 an application to subdivide 1C Sylvan Ave was submitted to Council. This should not have been accepted until the planning proposal to rezone the land to R5 was finalised. k. A Gateway determination was received in August 2017 and the planning proposal was exhibited in October 2017. l. The planning proposal should be finalised prior to consideration of the application to subdivide 1C Sylvan Avenue. m. Supports Council's action to rectify errors made in this area over last 5 years. n. These estates should be well-planned and not subjected to ill-advised opportune attempts to change the zoning and affect the amenity of the area. o. A planning proposal to rezone 74 South St from R5 to R2 was unanimously rejected by councilors in July of this year, reinforcing that all properties in the estate should be zoned 	<ul style="list-style-type: none"> d. See comment 1.c e. See comment 1.c f. Noted. Council does not influence the Department of Planning and Environment's timeframes. g. See comment 1.c h. See comment 1.l i. Noted. Not relevant to planning proposal j. See comment 1.b k. Agree. l. See comment 1.b m. See comment 1.l n. See comment 11.c o. Not relevant to consideration of planning proposal. See comment 32.e

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	R5.	
41.	<p>a. Objects to the planning proposal.</p> <p>b. When the land was purchased, the R2 zoning was already approved and should therefore remain.</p> <p>c. Has not experienced traffic issues on Sylvan Ave, particularly as vehicles already drive cautiously due to the childcare centre.</p> <p>d. The zoning of the subject land is consistent with the majority of the blocks within the Pacific Dunes Subdivision.</p> <p>e. If the subject land is rezoned then the property directly across the road should also be rezoned as it could generate many more lots than the 2 additional lots, which will cause many more traffic problems than development on the subject land.</p> <p>f. The rezoning application is not consistent with the council's previous position that of providing a variety of lot sizes and housing options in an area which is marked a growth suburb. This is supported by the following state and local plans which support this diversity and encourage growth which also supports infill development.</p> <ul style="list-style-type: none"> • Hunter Regional Development Plan • Port Stephens 2022 Integrated Strategic Plan • Port Stephens Planning Strategy 2011 – 2036 (PSPS) • Medowie Planning Strategy 2016 (MPS) <p>g. The existing dwelling has good street appeal and provides an attractive gateway to both the golf course and the estate.</p> <p>h. Neighbouring properties do not have similar street appeal and an additional dwelling will soften the appearance of this large dwelling and balance the streetscape.</p> <p>i. The 700m² minimum lot size was established when people built their homes as it was designed as the entrance to the golf club. Those opposed to the R2 zone are only concerned about losing their golf club views and have not considered</p>	<p>a. Noted.</p> <p>b. See comment 8.d</p> <p>c. See comment 4.b</p> <p>d. Noted.</p> <p>e. See comment 4.b</p> <p>f. Agree. See comment 37.b</p> <p>g. Noted. See comment 7.e</p> <p>h. Noted.</p> <p>i. Noted. See comment 7.e</p> <p>j. Not relevant to planning proposal.</p> <p>k. See comment 7.e</p>

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	<p>community aesthetics.</p> <p>j. If the planning proposal is supported, and further development is not approved, it is recommended that the backyard of 111 South Street be landscaped with trees to soften the view of neighbouring properties and increase privacy.</p> <p>k. It is important that the entrance to Pacific Dunes Golf Club is attractive due to the club's importance to the community and its international standing.</p>	
42.	<p>a. Objects to the planning proposal</p> <p>b. Does not support back-zoning people's land.</p> <p>c. Inappropriate not to allow property owners to undertake development that was permissible at time of purchase.</p> <p>d. It is more environmentally sustainable to use existing, cleared and underutilised land for further developments and housing.</p> <p>e. Higher density in already developed areas should be encouraged to reduce urban sprawl and further clearing of bushland – particularly in key community areas such as near schools, transport interchanges and shops</p> <p>f. This land cannot be classified as rural residential as the planning strategy requires a minimum lot size of 4000m². It should therefore be treated as originally intended; a residential zone.</p> <p>g. The back-zoning of this land does not fit with the Medowie Planning Strategy which states that "Dwelling density is estimated to be 12 dwellings per hectare (gross) similar to existing residential urban development in Medowie. The general applicable minimum lot size is 500m² however actual lot sizes are typically greater than this minimum and will reflect market demand (600m² to 700m²)."</p> <p>h. The planning proposal appears to be motivated by the personal interests of a vocal few, rather than meeting future local community needs and planning strategies.</p> <p>i. The planning proposal contravenes the planning strategies</p>	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. See comment 8.d</p> <p>d. Agree.</p> <p>e. Agree.</p> <p>f. The 4000m² minimum lot size is a general standard for rural residential land to ensure enough area exists for on-site sewerage treatment.</p> <p>g. Noted.</p> <p>h. Noted.</p> <p>i. Agree.</p>

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	that have been adopted by council and sets a dangerous precedent which could then undermine all zoning and the strategic plans for the use of land in Medowie.	
43.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Ave. c. Additional dwellings will add to traffic issues associated with school bus pick up / drop off. d. Parking issues associated with the childcare centre will be worsened if further development occurs in the locality. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.b c. See comment 4.b d. See comment 6.g
44.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The 2000m² minimum lot size was an attraction of the estate at time of purchase. 	<ul style="list-style-type: none"> a. Noted. b. Noted.
45.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Ave. c. Subdivision of the subject land would increase dangerous traffic issues near the childcare centre. d. The planning proposal for Pacific Dunes did not refer to the subject land. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.b c. See comment 4.b d. See comment 1.c
46.	<ul style="list-style-type: none"> a. Supports the planning proposal. e. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Ave. b. The site is not suitable for development due to traffic impacts on local network. c. The planning proposal is supported by the Department of Planning through a Gateway determination. 	<ul style="list-style-type: none"> a. Noted. b. See comment 1.b c. See comment 4.b d. See comment 6.h
47.	<ul style="list-style-type: none"> a. Objects to the planning proposal. b. This planning proposal was initiated by two Councilors, who were not re-elected in the recent elections, who wanted to block active development applications to subdivide the two subject sites. 	<ul style="list-style-type: none"> a. Noted. b. Noted. c. See comment 8.d d. See comment 1.c

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	<p>c. The owners of the subject land purchased their land fully informed of the developer's application to rezone the lots to R2, and this factored heavily in the way the site was developed and future planning.</p> <p>d. Records indicate one purchase took place after the change in zoning was supported through community consultation and unanimously supported by council.</p> <p>e. Negotiations for the sale of the land were put on hold until after Council supported the decision to rezone the property in question. This was a determining factor in the purchase and influenced the way the land was developed.</p> <p>f. Inappropriate for the land holders to be financially punished because neighbouring property owners failed to undertake thorough research.</p> <p>g. The planning proposal is a waste of resources.</p> <p>h. The current minimum lot size should be corrected to its originally proposed 700m² under the LEP 2013.</p> <p>i. The motivation behind this proposal is questionable. It was publicly declared in Council chambers on 9th May 2017 that it was acceptable for Pacific Dunes to rezone these blocks to increase yield but it was not acceptable for current owners to capitalise on it.</p> <p>j. The lot sizes on the southern side of South Street are 600m² and on Sylvan Avenue the neighbouring property is being developed for six houses, each on 1000m² lots. Council previously declared the purpose of these two corner lots is to provide transition between the smaller lots of the Dunes development and the larger lots of the Sylvan Ridge Estate. These corner lots mark the entrance to the Pacific Dunes Estate and should be inconsistent with the neighbouring properties because they are in different estates, different rules applied to their development and different stipulations were imposed on their build. The zoning is consistent with the estate to which they belong. Any change to this is illogical.</p>	<p>e. See comment 8.d</p> <p>f. Noted.</p> <p>g. Noted.</p> <p>h. See comment 1.c and 18.i</p> <p>i. Not relevant to planning proposal.</p> <p>j. See comment 18.h</p> <p>k. See comment 32.e</p> <p>l. Not relevant to planning proposal</p> <p>m. Agree. See comment 4.b</p> <p>n. See comment 6.g</p> <p>o. Noted.</p> <p>p. See comment 7.e</p> <p>q. See comment 1.l</p>

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	<p>k. Should Council not recognise the subject land as being part of the Pacific Dunes Estate, then they should compensate for the additional expenses incurred by these residents that are a direct result of their membership in that estate, covenants imposed by Pacific Dunes and Council should be removed and not be asking these residents should not have to seek approval from Pacific Dunes estate to ensure proposals comply with the estate's building restrictions.</p> <p>l. The large neighbouring lot across Medowie Road is zoned R2 with a minimum lot size 500m², which is inconsistent with the neighbouring properties and any subdivision would have significant traffic and amenity impacts.</p> <p>m. Numerous traffic studies, including an independent traffic report, do not support the claim that development of the subject land would have substantial traffic or parking impacts.</p> <p>n. The proposed lot contains sufficient area for any future development to adequately cater for the Council's DCP parking requirements.</p> <p>o. The estate lacks rural character and should be considered an urban subdivision.</p> <p>p. It is noted that inconsistency with the s117 Ministerial Directions is acceptable only when the proposal is not considered significant. Agrees with the statement in the planning proposal that states that the planning proposal is considered "not to be of minor significance". As the entry lots to the Pacific Dunes estate these lots are significant in their location, their purpose to transition between the two estates and the amount of resources already allocated in the assessment of planning proposals and DAs.</p> <p>q. Urges Council not to proceed with the planning proposal as it is inconsistent with every policy, strategic direction and future plan of council. It ignores the advice of multiple experts in their field and ignores standard town planning design practices. It claims to make the zoning consistent with neighbouring properties when it actually makes it</p>	

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Submission	Summary of Submission	Response
	inconsistent.	
48.	<ul style="list-style-type: none"> a. Supports the planning proposal. b. The planning proposal will ensure the subject land is in keeping with the surrounding estate, which is protective of the environment and the scenic qualities of the neighbourhood. A house on a large block is a natural buffer against noise and privacy impacts. c. The proposal will ensure that the rural character, streetscape and visual asymmetry of the estate are maintained, particularly given its location at the entrance to the estate. d. The roads and mains services have been designed to cater for one household per lot and any significant increase in density would potentially adversely affect this. e. Concern with traffic impact of additional dwellings in the location. f. Concern with parking, particularly given the nearby childcare centre, the number of proposed driveways and bus stop. g. Concern that the increase in turning traffic would result in an increase in street noise and would be dangerous. 	<ul style="list-style-type: none"> a. Noted. b. See comment 7.e c. See comment 7.e d. No evidence that existing services will be affected. See comment 4.b e. See comment 4.b f. See comment 6.g g. See comment 4.b
49.	<ul style="list-style-type: none"> a. Objects to the planning proposal. b. The subject land was rezoned to allow future subdivision in order to aid the selling of the Pacific Dunes development. c. The content of the petition against DA 16-2016-862-1 is misleading and factually incorrect in its assertions as it contains personal opinions not relevant to the DA. d. Future development would not affect the bus stop. e. All issues with traffic congestion, parking hazards, etc. will be eliminated in the near future when the bus stop is relocated around the corner on Medowie Road. f. All the traffic studies that have been conducted in the past determined that there was NO impact on traffic volumes, congestion or parking hazards. g. The planning proposal is based on anecdotal evidence and 	<ul style="list-style-type: none"> a. Noted. b. See comment 8.d c. Noted. d. See comment 4.b e. See comment 4.b f. Agree. See comments 4.b and 6.g g. Agree. It is recommended that the planning proposal be amended. h. Agree. i. Agree. j. See comment 1.c and 49.g k. Noted.

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	<p>ignores expert reports.</p> <p>h. The Hunter Regional Plan promotes housing diversity for rural and rural residential developments. The subdivision of the lots in question will increase this diversity as required. However, the planning proposal incorrectly states that the proposed amendments will encourage residential infill and increase housing choice.</p> <p>i. The planning proposal discusses a need to provide for a range of lot sizes, catering for future population growth and affordability. The planning proposal will remove affordable housing and limit future growth in this area.</p> <p>j. The planning proposal is inconsistent with original planning advice and recommendations and therefore lacks credibility. The minimum lot size was the only error.</p> <p>k. The current land owner's rights on the use of land as purchased will be removed.</p> <p>l. The planning proposal states that Department of Defence supports the increase in the permitted lot size. In the minutes for original council meeting 13 August 2013, item no. 14 – the Department of Defence classified this lot size reduction as 'acceptable' but subject to aircraft noise.</p> <p>m. The lot size reduction is completely consistent with neighbouring lots opposite and adjacent. DA 16-2015-682-1 was approved 29 January 2016 for six single storey dwellings. This site is across the road from 111 South Street and adjacent to 1C Sylvan Avenue. This development is consistent with the Hunter Regional Plan, as is the subdivision of the subject land.</p>	<p>l. See comment 6.h</p> <p>m. See comments 7.e and 37.b</p>
50.	<p>a. Supports the planning proposal.</p> <p>b. The large lot nature of the area is the reason many residents purchased property in the estate.</p> <p>c. This Council error is now being rectified due to intervention from the Minister for Planning.</p> <p>d. Council's error is admitted through the Gateway</p>	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. The planning proposal was initiated by a Notice of Motion dated 9 May 2017, not due by intervention by the Minister.</p> <p>d. See comments 1.c and 6.h</p> <p>e. See comment 7.e</p>

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	<p>Determination, which was covered up for many years and only exposed when property owners seek to benefit from the error.</p> <p>e. This is unfair to residents that purchased their lots with the expectation they would be living amongst similar properties with equal land sizes.</p> <p>f. The estate would be adversely affected by the increased traffic and car movements and noise occurring from the smaller lot sizes.</p> <p>g. Council should honour the Gateway determination and rectify the error in order to remove community angst and save council any future costs.</p>	<p>f. See comment 4.b</p> <p>g. See comment 6.h</p>
51.	<p>a. Supports the planning proposal.</p> <p>b. The R2 zoning of the subject land is not consistent with the area, which is primarily zoned R5.</p> <p>c. If the subject land maintains its R2 zoning, higher density development will be an eyesore and will create traffic and parking issues.</p> <p>d. Attracted to the quiet, semi-rural nature of the Pacific Dunes estate and this amenity will be impacted on by higher density development at the entrance to the estate.</p>	<p>a. Noted.</p> <p>b. See comment 18.h</p> <p>c. See comments 4.b, 6.h and 7.e</p> <p>d. See comment 7.e</p>
52.	<p>a. Supports the planning proposal.</p> <p>b. The Planning Proposal for Pacific Dunes Estate was misleading and deceptive as it contained no reference to the subject land.</p> <p>c. In January 2017 Council staff advised that 111 South Street and 1C Sylvan Avenue were included in the Hillside precinct. However, this is not mentioned in Clause 54A on page 20 of the proposal.</p> <p>d. Inappropriate for two lots to be rezoned without relevant documentation.</p> <p>e. The planning proposal will rectify error and ensure that the amenity of Sylvan Ridge Estate is maintained.</p>	<p>a. Noted.</p> <p>b. See comment 1.c</p> <p>c. See comment 1.c</p> <p>d. See comment 1.c</p> <p>e. See comments 1.c and 7.e</p> <p>f. See comment 4.b</p>

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	f. Concern regarding traffic impacts.	
53.	a. Supports the planning proposal. b. The R2 zoning of the subject land is not consistent with surrounding R5 land. c. Concerned with traffic and parking impacts, particularly in relation to the childcare centre and bus stop.	a. Noted. b. See comment 18.h c. See comments 4.b and 6.g
54.	a. Objects to the planning proposal. b. The proposed rural zone is not appropriate for lots under 4000m ² . c. Land holders should maintain their right to further develop their property.	a. Noted. b. See comment 42.f c. Noted.
55.	a. Objects to the planning proposal. b. There is no justified reason to rezone the subject land as the current zoning is consistent with the estate to which they belong. c. Traffic reports have confirmed that there are no traffic or parking issues created by subdividing these blocks. d. The planning proposal is inconsistent with Council, regional and NSW planning strategies and should not be supported.	a. Noted. b. See comment 18.h c. See comment 4.b and 6.g d. See comment 37.b
56.	a. Objects to the planning proposal. b. I do not believe there is a justified reason to rezone these blocks. The current zoning is consistent with the estate they belong to and traffic reports have confirmed there is no traffic or parking issues created by subdividing these blocks. c. This proposal is inconsistent with Council, Regional and NSW planning strategies and should not be supported.	a. Noted. b. See comment 18.h c. See comment 4.b and 6.g d. See comment 37.b
57.	a. Supports the planning proposal. b. The properties were zoned R5 with a minimum lot size of 2000m ² when purchased by current owners and dwellings constructed. c. The subject land was only rezoned by Councillors to R2 due	a. Noted. b. See comment 8.d c. See comment 1.c d. See comment 1.c e. See comment 11.c

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Submission	Summary of Submission	Response
	<p>to a mistake as the Pacific Dunes planning proposal failed to document the subject land. Further, the land is not part of the Pacific Dunes Community title.</p> <p>d. The land owners unfairly benefited from the R2 zoning.</p> <p>e. Should Council not rezone the subject land back to R5, the remaining lots in the estate should also be rezoned to R2 without payment of rezoning fees.</p> <p>f. The planning proposal should be finalised prior to consideration of the DA on 1C Sylvan Avenue.</p> <p>g. Correspondence to a resident in South Street from Gabrielle Upton's office confirms her support of the planning proposal.</p> <p>h. The planning proposal is supported by the Department of Planning and Department of Defence, which is sufficient justification.</p> <p>i. Concerns regarding traffic impacts particularly associated with the bus stop.</p>	<p>f. See comment 1.b</p> <p>g. Noted. See comment 6.h</p> <p>h. See comment 6.h</p> <p>i. See comment 4.b</p>
58.	<p>a. Supports the planning proposal.</p> <p>b. The proposed R5 zone is consistent with the original intent of the estate and attracted residents to the area.</p> <p>c. Commends Council and Department of Planning on seeking to rectify the error.</p>	<p>a. Noted.</p> <p>b. See comment 18.h</p> <p>c. See comment 1.l</p>
59.	<p>a. Supports the planning proposal.</p> <p>b. The proposed R5 zone is consistent with the remainder of the estate.</p> <p>c. High density development is not supported by the residents of the estate.</p>	<p>a. Noted.</p> <p>b. See comments 7.e and 18.h</p> <p>c. Noted.</p>
60.	<p>a. Objects to the planning proposal.</p> <p>b. The planning proposal is contrary to Council's strategic plans.</p> <p>c. It also seems to be in contradiction to the reasons used to support applications previously approved; Council supported the proposed three lot subdivision of the subject land, so suggesting now that the properties can't support subdivision seems unusual.</p> <p>d. Rezoning these lots does not consider the future requirements of Medowie as reducing development opportunities does not seem logical for a suburb marked for</p>	<p>a. Noted.</p> <p>b. Agree. The planning proposal conflicts Council's aims to provide a variety of housing choice, particularly in infill locations.</p> <p>c. Noted.</p> <p>d. Noted.</p> <p>e. See comment 4.b</p> <p>f. Noted.</p>

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Submission	Summary of Submission	Response
	<p>growth.</p> <p>e. The notion that two extra lots in Medowie will cause traffic chaos seems unjustified, particularly when two large scale subdivisions are proposed at Pacific Dunes.</p> <p>f. The current R2 zoning is appropriate for a modern suburban subdivision that is consistent with the estate.</p>	
61.	<p>a. Objects to the planning proposal.</p> <p>b. The current zoning is consistent with the estate to which they belong.</p> <p>c. Multiple traffic reports have confirmed there is no traffic or parking issues created by subdividing the subject land.</p> <p>d. This proposal is inconsistent with Council and regional plans that seek to create more housing through infill development.</p> <p>e. Medowie has been identified as a growth area yet this proposal prohibits growth.</p> <p>f. The location of the land is 500 metres from a proposed school, so reducing potential housing density seems short sighted.</p>	<p>a. Noted.</p> <p>b. See comment 18.h</p> <p>c. See comments 4.b and 6.g</p> <p>d. See comments 37.b and 60.b</p> <p>e. See comment 17.e</p> <p>f. Noted.</p>
62.	<p>a. Supports the planning proposal.</p> <p>b. Attracted to the rural residential, low density housing character in the Sylvan Ridge Estate and surrounds.</p> <p>c. Pacific Dunes Golf Club proposes lot sizes of 300 – 400m², which is considered high density housing.</p> <p>d. Justification for the increased density seems to be based on anticipated operational difficulty of the golf course, which is not consistent with various strategies.</p> <p>e. The amenity and asset value of the area has been degraded by decisions taken lightly and without due diligence.</p> <p>f. Property owners were not appropriately notified when the land zone changed in (approximately) 2011.</p> <p>g. When the subject land was rezoned from R5 to R2, the following concerns were raised:</p> <ul style="list-style-type: none"> • Traffic congestion resulting from additional dwellings; • Subdivision would change the neighbourhood in an unplanned manner; • Over development in our area has affected the flow of 	<p>a. Noted.</p> <p>b. Noted.</p> <p>c. Pacific Dunes Estate has minimum lot size maps that range from 200m² to 600m².</p> <p>d. The subject land was zoned R2 as part of a planning proposal for the Pacific Dunes Estate. At this time, justification for the rezoning was provided.</p> <p>e. See comment 7.e</p> <p>f. See comment 12.d</p> <p>g. See comments 4.b, 7.e and 48d</p> <p>h. See comments 6.g and 4.b</p> <p>i. See comment 7.b</p> <p>j. Noted.</p> <p>k. See comment 17.e</p> <p>l. Not relevant to planning proposal.</p>

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	<p>water particularly at times of peak demand; and</p> <ul style="list-style-type: none"> • Other services are similarly effected - transport, more Garbage collection, power drainage etc. <p>h. The following concerns are raised should the planning proposal not be supported:</p> <ul style="list-style-type: none"> • parking issues, particularly associated with the childcare centre during events; • Traffic issues associated with the six recently approved dual occupancies in the vicinity and increased usage of an already busy road; • Increased traffic associated with construction and deliveries. <p>i. The planning proposal will maintain amenity of Sylvan Avenue.</p> <p>j. Existing houses in Sylvan Ave are consistent with the covenant.</p> <p>k. It was never intended that the subject land contain anything more than a single dwelling with approval for additional/secondary dwelling of a limited sized ie 60m2 or 40% of the principal dwelling.</p> <p>l. When property was purchased, it was done so under the understanding that the covenants would remain relevant.</p> <p>m. It was understood that the land zoning and asset value would not be impacted by rezoning.</p> <p>n. Council has not protected asset values by amending the LEP.</p> <p>o. A decision to not support the planning proposal would destroy the local environment's ambience and aesthetics.</p> <p>p. There is a sufficient variety of affordable housing in Medowie.</p>	<p>m. See comment 7.e</p> <p>n. See comment 7.e</p> <p>o. See comment 7.e</p> <p>p. Evidence suggests that there is a need for a variety of housing, including affordable housing, in the Port Stephens LGA.</p>
63.	Supports the planning proposal.	Noted.
64.	<p>a. Supports the planning proposal.</p> <p>b. The subject land is considered to be cornerstone blocks and priority must be given to what our aspiring Sylvan Ridge Residential Group wish to see corrected, being that the subject land is rezoned back to their R5 Large Lot residential</p>	<p>a. Noted.</p> <p>b. Noted. See comment 1.i</p> <p>c. Noted.</p> <p>d. Noted. See comment 12.d</p>

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Submission	Summary of Submission	Response
	<p>zoning.</p> <p>c. The community want the protection associated with the R5 Large Lot Residential Zones, specifically 2000m² minimum lot size.</p> <p>d. The R2 zoning displeased the community.</p> <p>e. In the PSC Strategic Plan, PSC wishes to retain the community vision of "a great lifestyle in a <i>treasured</i> environment". Questions whether Council shares this vision.</p> <p>f. Councillors were not adequately alerted when the subject land was rezoned to R2.</p> <p>g. Council's role is to "encourage local democracy through engaging and involving the community in decisions that affect them". The community's faith in Council's decision making has been damaged through this process.</p> <p>h. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Avenue.</p> <p>i. Does not believe that Council undertakes due diligence in the assessment process, which created this error, which was not in the community's interest.</p> <p>j. The Sylvan Avenue Estate community want the subject land to be rezoned back to R5.</p> <p>k. Council needs to rectify their error and make a decision based on integrity.</p> <p>l. The planning proposal is supported for the following reasons:</p> <ul style="list-style-type: none"> • The planning proposal for the Pacific Dunes Estate did not make reference to the subject land, which is not part of the Pacific Dunes Estate and are the cornerstone blocks of Sylvan Ridge Estate; • The rezoning mistake because councillors were not made aware that the subject land was part of the Pacific Dunes Planning Proposal; • Councillors have admitted that they were not made aware when the subject land was zoned R2, and apologised to community; • The subject land was purchased by both parties while zoned R5 and this zoning only changed due to council 	<p>e. Noted.</p> <p>f. See comment 1.c</p> <p>g. See comment 12.d</p> <p>h. See comment 1.b</p> <p>i. See comment 1.c</p> <p>j. There are a number of submissions both in support of rezoning the land R5, and maintaining the R2 zone. The report recommends that the planning proposal be amended so that the subject land retains its R2 zoning with a minimum lot size of 700m².</p> <p>k. See comment 1.c</p> <p>l. See comments 1.c, 1.l, 8.d, 32.e, 7.e, 18.h, 4.b, 6.g and 6.h</p>

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Submission	Summary of Submission	Response
	<p>error. Houses were built to be consistent with the R5 zone.</p> <ul style="list-style-type: none"> • Given that the owners did not pay rezoning fees, they will not suffer financially from rezoning the land back to R5. • The owners will gain financial benefit from subdividing the land, while the neighbourhood streetscape, amenity, and land values will be impacted. • Questions Council's integrity. • At its meeting on 11 July 2017, Council refused a development application to subdivide 111 South Street. • The planning proposal will ensure consistent lot sizes in Sylvan Ridge Estate and prevent any further subdivision. • The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Ridge. • Subdivision of the subject land should not be allowed as the land was rezoned in error. • Concerns regarding traffic congestion resulting from additional dwellings located at critical junction, particularly in conjunction with the bus stop. • The site has been assessed by the bus company as being dangerous and not a suitable location for dropping off and picking up school children. • The Department of Defence supports the planning proposal. • Parking associated with the childcare centre will become more dangerous should there be an increase in dwellings in the location. • The planning proposal is not considered to be a 'minor matter', requiring only 14 day exhibition period. • There are 47 objections to the DA to subdivide 1C Sylvan Ave, indicating that the community does not support subdivision in this area. • The estate and childcare centre are already experiencing negative impacts of the development of six dwellings adjacent to the subject land, such as noise, dust, noise, 	

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	<p>illegal parking on council reserve, excavation of council footpaths and lack of traffic control.</p> <ul style="list-style-type: none"> Concerned that there is a conflict of interest with a councillor who was involved in the preparation of the DA. Residents received a letter from Gabrielle Upton acknowledging the council's acceptance of their mistake and supporting PSC in taking measures to correct the "anomaly" Further subdivision of the subject land is not in the public interest. 	
65.	<p>a. Supports the planning proposal.</p> <p>b. The subject land should have an R5 zone in order to be consistent with the original intention of the estate, which is consistent with the traffic conditions and provides safe environment for children.</p>	<p>a. Noted.</p> <p>b. See comment 4.b and 18.h</p>
66.	<p>a. Supports the planning proposal.</p> <p>b. The subject land should have an R5 zoning in order to be consistent with original intent of the estate.</p> <p>c. The land was zoned R2 in error and the planning proposal for Pacific Dunes was misleading as it was not clear that the subject land was included, particularly as the land is not part of the Pacific Dunes Estate.</p> <p>d. The councillors were misled and have apologised for inadvertently rezoning the subject land to R2.</p> <p>e. Given that the subject land was zoned R5 at the time of purchase, and the owners did not pay rezoning fees, as such the council does not need to reimburse the owners in any way.</p> <p>f. Traffic and parking concerns regarding the safety of the childcare centre patrons and school children using the bus stop, particularly as density increases in this area.</p> <p>g. Council received 47 objections to the proposed subdivision of 1C Sylvan Ave, demonstrating that the community does not support increased density.</p> <p>h. The Department of Planning support the planning proposal as they issued a Gateway determination.</p>	<p>a. Noted.</p> <p>b. See comment 18.h</p> <p>c. See comment 1.c</p> <p>d. See comment 1.c</p> <p>e. See comment 32.e</p> <p>f. See comments 4.b and 6.h</p> <p>g. Noted.</p> <p>h. See comment 6.h</p> <p>i. See comment 1.b</p>

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	i. The planning proposal should be finalised prior to consideration of the DA to subdivide 1C Sylvan Avenue.	
67.	a. Supports the planning proposal. b. The R2 zoning is not consistent with the character of the area.	a. Noted. b. See comments 7.e and 18.h
68.	a. Supports the planning proposal. b. The planning proposal should be finalised prior to consideration of any application to subdivide the subject land. c. A number of councillors were misled when the land was rezoned from R5 to R2. d. The Pacific Dunes planning proposal did not make it clear to councillors that the subject land was being rezoned.	a. Noted. b. See comment 1.b c. See comment 1.c d. See comment 1.c
69.	a. Objects to the planning proposal. b. The planning proposal is a waste of council resources as it was always intended to have smaller lots at the entrance of the subdivision.	a. Noted. b. See comment 7.e
70.	a. Objects to the planning proposal. b. There is no justified reason to rezone the subject land. c. The current zoning is consistent with the estate to which they belong and traffic reports have confirmed there are no traffic or parking issues created by subdividing the subject land. d. This proposal is inconsistent with Council, regional and NSW planning strategies and should not be supported.	a. Noted. b. The planning proposal was initiated by a Notice of Motion dated 9 May 2017. c. See comments 4.b, 6.g and 18.h d. Agree. See comment 37.b
71.	a. Objects to the planning proposal. b. Inappropriate to rezone the subject land back to R5 when a unanimous decision was made in 2012 to rezone it. c. The decision to refuse the application to subdivide 111 South Street contradicted the advice of expert council staff as it was consistent with planning and statutory requirements and was deemed to benefit the community. d. While a petition states that 135 signatures were collected, in reality there are only two immediately affected land owners and about 10 on the other side of the road. The two affected are above this property, both tower above the affected property and one has a very large shed on the common boundary. Therefore, the owner of 111 South Street has	a. Noted. b. See comment 18.1 c. Noted. d. Noted. Notwithstanding, all members of the community are entitled to lodge submissions on planning proposals and development applications.

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	already suffered amenity loss.	
72.	a. Supports the planning proposal as this was the original intent of the Sylvan Ridge Estate. b. Traffic and parking concerns associated with childcare centre and bus stop.	a. Noted. b. See comments 4.b and 6.h
73.	a. supports the planning proposal. b. The R2 zone is not consistent with the character of the area	a. Noted. b. See comment 18.h
74.	a. Supports the planning proposal. b. The planning proposal should be finalised prior to consideration of the application to subdivide 1C Sylvan Avenue. c. The planning proposal includes a copy of clause 54A from the PSLEP 2000, but does not include a copy of the map "Pacific Dunes Residential Area", so comparison with the properties in Figure 10 cannot be undertaken.	a. Noted. b. See comment 1.b c. See comment 1.c



Proposed amendment to the PSLEP 2013
Lot 14 DP 1079392 (111 South St, Medowie)
Lot 11 DP 1105086 (1C Sylvan Ave, Medowie)



ITEM 3 - ATTACHMENT 2 PLANNING PROPOSAL.**FILE NUMBERS**

Council: PSC2017-01859
Department: PP_2017_PORTS_003_00

SUMMARY

Subject land: 111 South Street (Lot 14 DP 1079392)
1C Sylvan Avenue (Lot 11 DP1105086)
Subject land area: Lot 14 DP 1079392 - 2262m²
Lot 11 DP 1105086 - 3017.43m²
Existing zoning and min. lot size: R2 Low Density Residential & 450m²
Proposed zoning and min. lot size: R2 Low Density Residential & 700m²

BACKGROUND

A planning proposal to rezone 111 South Street and 1C Sylvan Avenue from the existing zoning R2 - Low Density Residential to R5 - Large Lot Residential and increase the minimal lot size from 450m² to 2,000m² was placed on public exhibition for 14 days from 26 October to 9 November 2017. 74 submissions were received. 55 were in favour of and 19 were opposed to the proposal.

This planning proposal was the result of the following Notice of Motion (NoM):

"That Council commence the process of rezoning 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) from the current zoning R2 to R5. This provides consistencies with surrounding zoning and prevents subdivision into smaller lots, creating traffic parking hazards that have a significant impact on the amenity and streetscape of the surrounding area."

Prior to this, a planning proposal was submitted to Council in February 2012 on behalf of Pacific Dunes Estate. The intent of the rezoning was to facilitate higher densities in Pacific Dunes Estate, by rezoning land to 2(a) Residential and lowering the applicable minimum lot size. Council endorsed the proposal with a minimum lot size of 700m². Council then resolved to prepare the planning proposal on 24 April 2012 and resolved to proceed with the planning proposal post-exhibition on 13 August 2013. Both resolutions were unanimous.

At some time between the exhibition period and gazettal, an administrative error resulted in the minimum lot size being reduced to 450m². The error was not realised until after gazettal of the planning proposal which occurred concurrently with the LEP2013. To date, this error has not been rectified and the current minimum lot size for the site remains at 450m².

This planning proposal seeks to rectify this error by proposing that the minimum lot size increase from 450m² to 700m².

Figure 1 – Subject Site



ITEM 3 - ATTACHMENT 2 PLANNING PROPOSAL.**SITE DESCRIPTION**

The sites are adjacent corner lots located on the intersection of South Street and Sylvan Avenue (**FIGURE 1**).

The site is zoned R2 Low Density Residential and has a minimum lot size of 450m². Both sites contain single storey dwellings. The site's topography rises gently from South Street to the north. Surrounding developments comprise predominantly detached single dwellings of both one and two storeys in height.

The land to the south of the subject site is zoned R2 Low Density Residential, with a minimum lot size of 600m². The land to the north is zoned R5 Large Lot Residential with a minimum lot size of 2,000m².

A development application (DA) 16-2015-682-1 for three dual occupancies (six single storey dwellings) across three lots at 1A, and 1D Sylvan Avenue was approved on 29 January 2016. These allotments are located to the west of the subject site, directly across the road from the property at 8 Sylvan Avenue. This land is zoned R5 Large Lot Residential with a minimum lot size of 2,000m².

PART 1 – Objective of the proposed Local Environmental Plan

The objective of the planning proposal is to implement the Port Stephens Council Notice of Motion dated 9 May 2017.

PART 2 – Explanation of the provisions to be included in proposed LEP

The objectives of this planning proposal will be achieved by amending the Minimum Lot Size Map for Lot 14, DP 1073992 (111 South St) and Lot 11, DP 1105086 (1C Sylvan Avenue) from 450m² to 700m² in accordance with (**ATTACHMENT 3**).

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal***1. Is the planning proposal a result of any strategic study or report?***

The planning proposal is not the direct result of any strategic study or report. The planning proposal is the result of a Notice of Motion to Council on 9 May 2017, in which Council resolved to immediately prepare the planning proposal for submission to Gateway Determination.

Since this Notice of Motion, the proposal has been amended to now seek no change in the land-use zone and a reduction in the minimum lot size from the proposed 2,000m² to 700m² based on the following reasons:

ITEM 3 - ATTACHMENT 2 PLANNING PROPOSAL.

- To correct an administration error. The resolution provided by Council on 24 April 2012 intended for the zone to be R2 Low Density Residential and a MLS of 700sqm. This is clearly stipulated in the resolution and the planning proposal.
- To provide certainty. An objective of planning controls is to provide certainty for both the community and investors. If a site has subdivision potential, this changes its market value and what an investor is willing to pay. Back zoning land reduces confidence for investment in Port Stephens and the certainty of the community to understand that their land could be back zoned in the absence of a Strategic Plan.
- To provide a MLS that allows the existing lots to be subdivided, which promotes building form on a corner lot with frontage to both streets. This activates both street frontages for surveillance and is a desirable urban design outcome.
- To provide a transition from existing lots to the south that range from 200sqm to 600sqm in Pacific Dunes to the existing lots to the north, being 2,000sqm.
- A density of two detached dwellings (i.e. dual occupancy in R5 Large Lot Residential) is achievable on the existing site and those to the north under the Port Stephens Local Environmental Plan 2013 (c4.1B).
- A MLS of 700sqm will not create significant parking hazards. The Port Stephens Development Control Plan 2014 requires development applications to provide on-site parking and traffic assessments to address traffic and parking matters.

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

The planning proposal is the only means of achieving the desired outcome, as an amendment to the LEP is required.

SECTION B – Relationship to Strategic Planning Framework

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

The relevant regional strategy is the Hunter Regional Plan 2036 (HRP).

A key direction of the HRP is the promotion of housing diversity. This includes guidance in local land use strategies for expanding rural villages and rural-residential development so that such developments will:

- Not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;
- Not impact on drinking water catchments;
- Not result in greater natural hazard risk;
- Occur on land that is unlikely to be needed for future development; and
- Contribute to the conservation values or the establishment of important corridor linkages.

The proposed amendment facilitates the development of this site for residential development, which is consistent with the HRP, which seeks to encourage residential infill development and increased housing choice.

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4. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The relevant local strategic plan is the Port Stephens Planning Strategy (PSPS), which is provided further local detail by the Medowie Planning Strategy. The PSPS identifies Medowie as an urban release area that is to accommodate a significant proportion of Port Stephens Greenfield and Infill housing forecasts. Within the PSPS, Medowie is identified to be part of the Eastern Growth Corridor.

Further detail is provided to the PSPS by the Medowie Planning Strategy. This Strategy identifies locations for residential and rural residential housing. The identification of these locations is supported by relevant infrastructure planning (i.e. traffic and transport) and associated funding (i.e. s94 Plan).

The strategy does not identify existing lots for Infill Housing. Therefore, the proposal is not considered to be inconsistent with the Strategy. Rather, it is considered to be consistent with the following relevant strategy principles, such as: 'rural residential character is balanced with urban development' (p.4).

5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant state environmental planning policies is now provided.

SEPP 44 Koala Habitat Protection

The Port Stephens Comprehensive Koala Plan of Management (CKPOM) is applied in Port Stephens LGA for the purposes of implementing SEPP 44.

The relevant objectives of the CKPOM are to:

- Evaluate and rank habitat throughout the LGA;
- Identify priority conservation areas and strategies to protect significant habitat and population;
- Identify threats;
- Provide for the long-term survival of populations by addressing conservation strategies to effectively address each of the threats;
- Provide for the restoration of degraded areas;
- Ensure that adequate detail is provided with development applications in order to assess, minimise and ameliorate likely impacts;
- Provide guidelines and development standards to protect koalas and habitat;
- Provide for the effective implementation and monitoring of the CKPOM.

Council koala habitat planning mapping indicates that the site has been classified as a linkage over cleared land. The meets the performance criteria for rezoning proposals of the CKPOM which are that development will:

- a. Not result in development within areas of Preferred Habitat
- b. Allow for low impact development within areas of Supplementary Habitat.

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- c. Minimise the removal of any individuals of food trees.
- d. Not result in development which would sever koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.

The proposal is consistent with these performance criteria.

SEPP 55 Remediation of Land

The Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment by:

- a. Specifying when consent is required, and when it is not required, for a remediation work, and
- b. Specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
- c. Requiring that remediation work meet certain standards and notification requirements.

The existing use of the site as residential development and its proposed continued use for residential development do not trigger the need for a preliminary investigation for contamination under this SEPP.

6. Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of the planning proposal against the relevant s.117 Directions is now provided.

Direction 3.1 Residential Zones

Objectives

The objectives of this Direction are:

- To encourage a variety and choice of housing types to provide for existing and future housing needs;
- To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; and
- To minimise the impact of residential development on the environment and resource lands.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:

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- An existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- Any other zone in which significant residential development is permitted or proposed to be permitted.

What a relevant planning authority must do if this direction applies

A proposal must include provisions that encourage the provision of housing that will:

- Broaden the choice of building types and locations available in the housing market, and
- Make more efficient use of existing infrastructure and services, and
- Reduce the consumption of land for housing and associated urban development on the urban fringe, and
- Be of good design.

A planning proposal must, in relation to land to which this direction applies:

- Contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- Not contain provisions which will reduce the permissible residential density of land.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- Justified by a strategy which:
 - gives consideration to the objective of this direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning, or
- Justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- Is in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- Is of minor significance.

Assessment

This direction applies because the planning proposal affects land within an existing residential zone. The sites already have existing dwellings. In amending the land zoning and minimum lot size, future development opportunities will be improved. For this reason, the objectives of this direction have been met.

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Direction 3.4 Integrating Land Use and Transport

Objectives

The objective of this Direction are:

- Improving access to housing, jobs and services by walking, cycling and public transport;
- Increasing the choice of available transport and reduce dependence on cars;
- Reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car;
- Supporting the efficient and viable operation of public transport services;
- Providing for the efficient movement of freight.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

What a relevant planning authority must do if this direction applies

A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of *Improving Transport Choice – Guidelines for planning and development* and *The Right Place for Business and Services – Planning Policy*.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- Justified by a strategy which: gives consideration to the objective of this direction; and identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites); and is approved by the Director-General of the Department of Planning, or
- Justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- In accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- Of minor significance.

Assessment

This direction applies because the Planning Proposal relates to land zoned for residential purposes. In the Medowie Planning Strategy, South Street is classified as a collector and/or local road. Although, there is currently limited access to public transport and paths/cycleways in the immediate vicinity of the site, there are future

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provisions in the Medowie Planning Strategy of a bus stop to be located on the corner of Medowie Road and South Street.

A shared-use path has also been proposed along Medowie Road connecting residential areas to the Medowie Town Centre. The Planning Proposal satisfies this direction with the Medowie Strategy addressing future connectivity via public transport and cycle/pathways to the Medowie Town Centre.

Direction 3.5 Development Near Licensed Aerodromes

Objectives

The objectives of this direction are:

- To ensure the effective and safe operation of aerodromes, and
- To ensure that their operation is not comprised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and
- To ensure development for residential purposes of human occupation, if situated with ANEF contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.

What a relevant planning authority must do if this direction applies

In the preparation of a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome, the relevant planning authority must:

- Consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome,
- Take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth,
- For land affected by the OLS: prepare appropriate development standards, such as height, and allow as permissible with consent development types that are compatible with the operation of an aerodrome,
- Obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of the Act (s57),
- A planning proposal must not rezone land: for residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth exceeds 25; or for schools, hospitals, churches and theatres where the ANEF exceeds 20; or for hotels, motels, offices or public buildings where the ANEF exceeds 30,
- A planning proposal that rezones land: for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25; or for hotels, motels, offices or public buildings where the ANEF is between 25 and 30;

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or for commercial or industrial purposes where the ANEF is above 30; must include a provision to ensure that development meets AS2021 regarding interior noise levels.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- Justified by a strategy which:
 - Gives consideration to the objective of this direction, and
 - Identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - Is approved by the Director-General of the Department of Planning, or
- Justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- In accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- Of minor significance.

Assessment

This direction applies because Medowie is in proximity to RAAF Base Williamtown, Newcastle Airport and the Salt Ash Air Weapons Range. The site is not affected by the ANEF 2012 or 2025 maps, however, land outside of ANEF contours can still be affected by aircraft noise and activities.

Direction 4.1 Acid Sulfate Soil

Objective

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.

What a relevant planning authority must do if this direction applies

The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

When a relevant planning authority is preparing a planning proposal to introduce

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provisions to regulate works in acid sulfate soils, those provisions must be consistent with:

- The Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or
- Other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.

Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with paragraph (5).

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- Justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- Of minor significance.

Assessment

The site is nominated as Class 5 soils, requiring consent for works with 500m of adjacent soil classes. This is the lowest risk classification. The issue will be managed through existing provisions of the LEP.

Direction 4.3 – Flood Prone Land**Objective**

The objectives of this direction are:

- To ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both

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on and off the subject land.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

What a relevant planning authority must do if this direction applies

A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).

A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial Special Use or Special Purpose Zone.

A planning proposal must not contain provisions that apply to the flood planning areas which: permit development in floodway areas; permit development that will result in significant flood impacts to other properties; permit a significant increase in the development of that land; are likely to result in a substantial increased requirement for government spending on flood mitigation measures, infrastructure or services; or permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodway or high hazard areas), roads or exempt development.

A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- The planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or

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- The provisions of the planning proposal that are inconsistent are of minor significance.

Assessment

The site has been assessed in accordance with the Medowie Floodplain Risk Management Study and Plan 2016. The site is located on land mapped as being a minimal risk flood planning area: however this flood prone land only consists of approximately 75m² in the eastern corner of the site.

As only the eastern corner of the lot is mapped as flood prone any development will not create any significant negative impacts on the local flooding characteristics.

Direction 4.4 – Planning for Bushfire Protection**Objective**

The objective of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

What a relevant planning authority must do if this direction applies

In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under the Act (s56), and prior to undertaking community consultation in satisfaction of the Act (s57), and take into account any comments so made.

A planning proposal must:

- Have regard to Planning for Bushfire Protection 2006,
- Introduce controls that avoid placing inappropriate developments in hazardous areas, and
- Ensure that bushfire hazard reduction is not prohibited within the APZ.

A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:

- Provide an Asset Protection Zone (APZ) incorporating at a minimum:
- An Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
- An Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- For infill development (that is development within an already subdivided area),

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where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,

- Contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- Contain provisions for adequate water supply for firefighting purposes,
- Minimise the perimeter of the area of land interfacing the hazard which may be developed, and
- Introduce controls on the placement of combustible materials in the Inner Protection Area.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Assessment

This Direction applies because the site is mapped as Bushfire Prone Land. If development is proposed on the site, this Bushfire Prone Land layer will trigger the appropriate level of assessment under Planning for Bushfire Protection.

Direction 5.10 – Implementation of Regional Plans**Objective**

The objective of this Direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

When this direction applies

This direction applies when a relevant planning authority prepares a proposal.

What a relevant planning authority must do if this direction applies

Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:

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- Is of minor significance, and
- The planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.

Assessment

The planning proposal is consistent with the relevant goal of the Hunter Regional Plan to create greater housing choice and jobs, including for new housing to be focused in established areas through infill development. Further detail is provided under Question No.3 of this planning proposal.

SECTION C – Environmental, Social and Economic Impact

7. 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?

No. The site does not contain any critical habitat or threatened species, populations or ecological communities, or their habitats.

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

No additional environmental effects are anticipated as a result of this amendment.

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

The planning proposal will reduce subdivision potential and therefore housing, which is believed to have minimal social or economic impacts.

SECTION D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

Reticulated sewer and water infrastructure is available consistent with existing surrounding urban development. This matter will be appropriately addressed at the development application stage.

11. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

In accordance with the gateway determination, the views of the Rural Fire Service and Department of Defence were sought. Neither of these agencies raised objections on the grounds of bushfire or airport operations.

Part 4 – Mapping

The proposed mapping amendments to the LEP are included as attachments.

ITEM 3 - ATTACHMENT 2 PLANNING PROPOSAL.**Part 5 – Community Consultation**

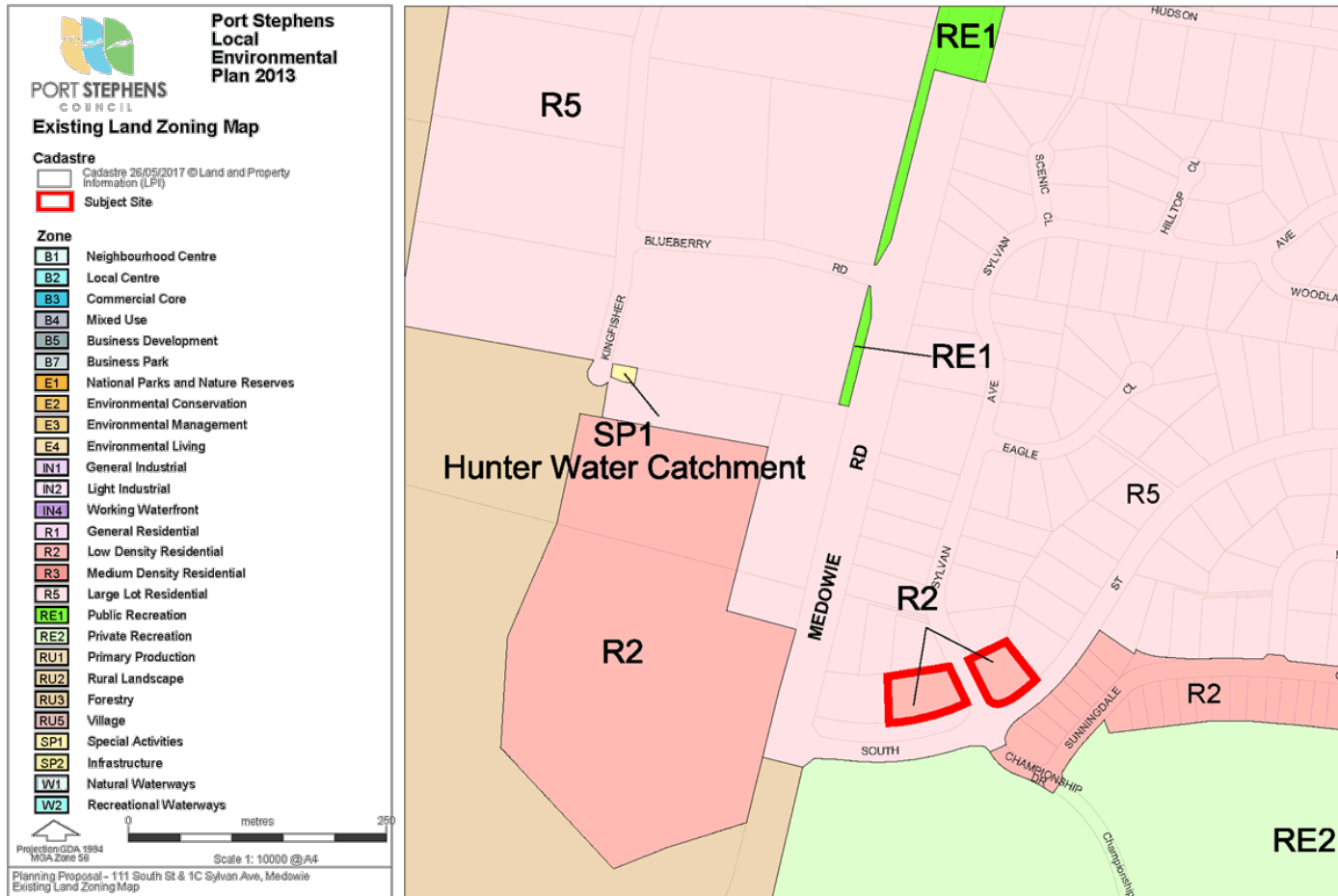
In accordance with the gateway determination, the planning proposal was placed on public exhibition for 14 days from 26 October 2017. The outcomes of this exhibition period are covered by the Council Report and associated attachments.

Part 6 – Project Timeline

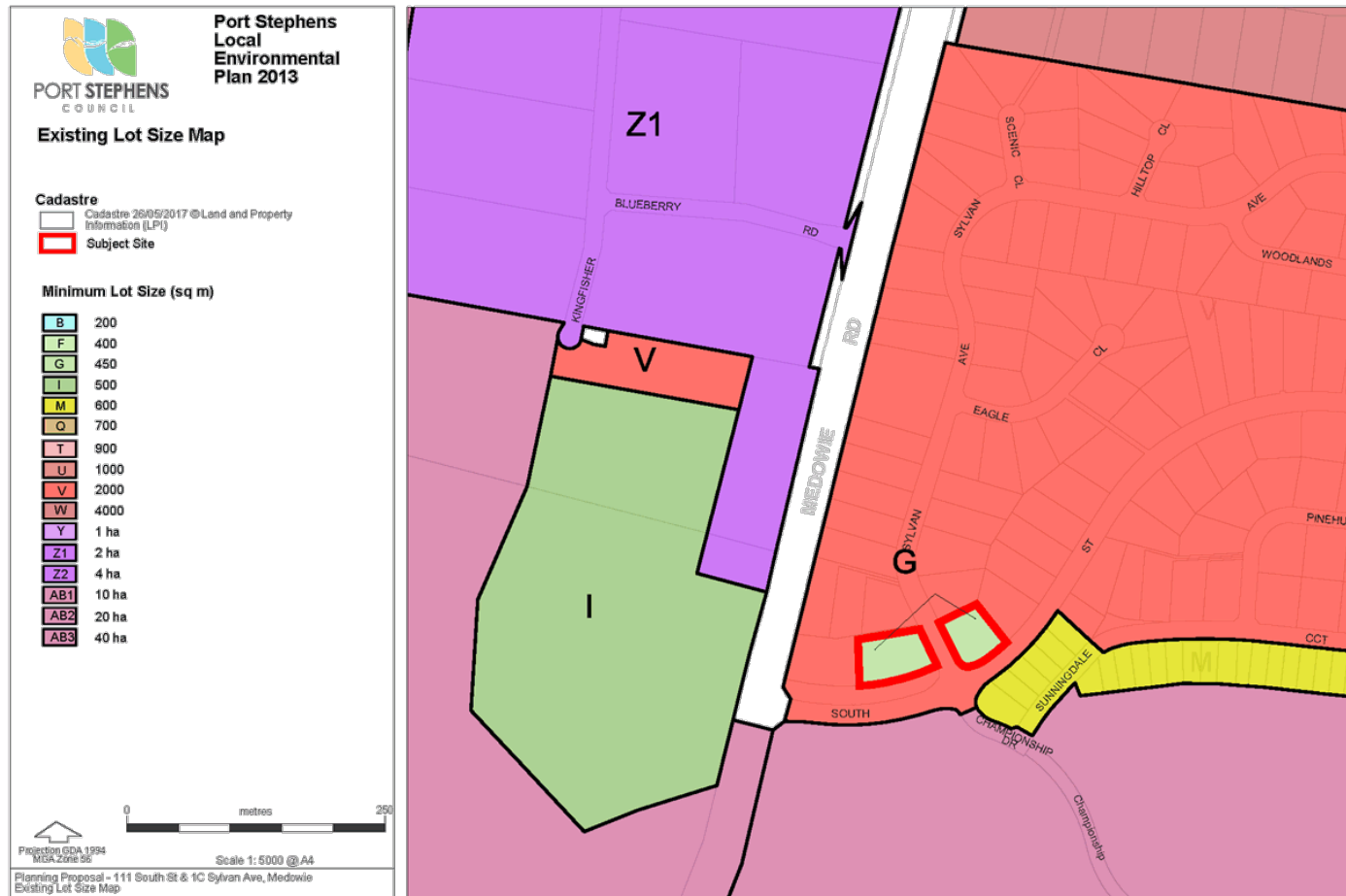
The project is expected to be completed in accordance with below. The following timetable is proposed:

	Task Description	Estimated Timeline
1.	Planning Proposal	13 July 2017
2.	Gateway Assessment	July –October 2017
3.	Agency Consultation	October 2017
4.	Public Exhibition	November 2017
5.	Review Submissions	December 2017
6.	Council Report	December 2017
7.	Revised Gateway	January 2018
8.	Public Exhibition	January 2018
9.	Review Submissions	February 2018
10.	Council Report	March/April 2018
11.	Parliamentary Counsel	May 2018

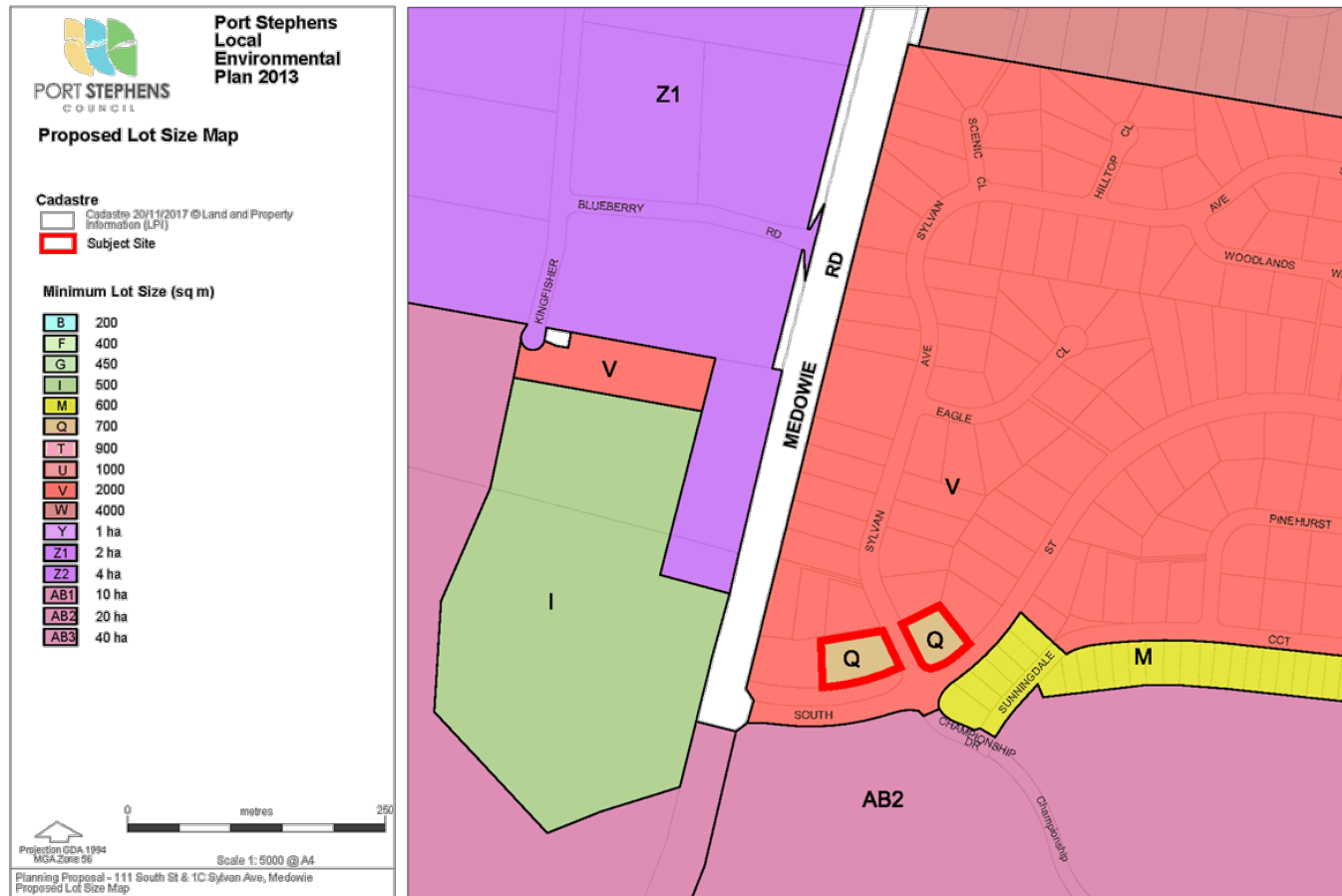
Attachment 1 – Existing Land-Use Zone Map



Attachment 2 – Existing Minimum Lot Size Map



Attachment 3 – Proposed Minimum Lot Size Map



MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

Councillor Ken Jordan returned to the meeting at 7:22pm in Committee of the Whole.

ITEM NO. 2

FILE NO: 17/147377
RM8 REF NO: 16-2017-480-1

DEVELOPMENT APPLICATION NO. 16-2017-480-1 FOR A TWO LOT SUBDIVISION AT 1C SYLVAN AVENUE, MEDOWIE (LOT 11 DP1105086)

REPORT OF: ANDREW ASHTON - ACTING DEVELOPMENT ASSESSMENT &
COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2017-480-1 for a one into two lot Torrens title subdivision at No.1C Sylvan Avenue, Medowie (Lot 11 DP 1105086), subject to the conditions contained in **(ATTACHMENT 3)**.
-

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor John Nell That the recommendation be adopted.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Glen Dunkley, Ken Jordan and John Nell.

Those against the Motion: Crs Jaimie Abbott, Giacomo Arnott, Sarah Smith and Steve Tucker.

The Motion was carried on the casting vote of Mayor Ryan Palmer.

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017 AMENDMENT

	Mayor Ryan Palmer Councillor Sarah Smith That item 2 be deferred for further advice.
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MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Ryan Palmer and Sarah Smith.

Those against the Motion: Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell and Steve Tucker.

The amendment was lost.

ORDINARY COUNCIL MEETING - 12 DECEMBER 2017 MOTION

312	<p>Councillor Ken Jordan Councillor Glen Dunkley</p> <p>It was resolved that Council approve Development Application DA No. 16-2017-480-1 for a one into two lot Torrens title subdivision at No.1C Sylvan Avenue, Medowie (Lot 11 DP 1105086), subject to the conditions contained in (ATTACHMENT 3).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Crs Jaimie Abbott and Giacomo Arnott.

BACKGROUND

The purpose of this report is to present Development Application (DA) No.16-2016-480-1 to Council for determination. The DA proposes a two (2) lot Torrens title subdivision at 1C Sylvan Avenue, Medowie (Lot 11 DP 1105086).

A locality plan is provided at **(ATTACHMENT 1)**.

The application had been called to Council by former Councillor Kafer prior to the recent local government elections. A copy of the call up form has been included as **(ATTACHMENT 2)**.

Proposal

The application proposes the subdivision of the subject land into two (2) lots. Proposed Lot 111 will be located along the eastern section of the site and comprise 951m². The proposed lot does not contain any buildings and will be accessed from

the existing shared driveway to the north of the site. A stormwater design was provided and will include a collection pit along the eastern boundary and outlet pipe to the existing stormwater infrastructure in Sylvan Avenue.

Proposed Lot 112 will be located on the western portion of the site and comprise 2,078m². The site is serviced and will include the existing dwelling and shed. Stormwater will continue to be discharged to the South Street frontage via the existing infrastructure.

Site Details

The subject sites are located at 1C Sylvan Avenue in Medowie (LOT: 11 DP: 1105086), situated to the northwest of the intersection between South Street and Sylvan Avenue. The lot currently contains a dwelling and shed located in the western section of the site.

The site is accessed via a shared driveway (6m wide) that also services the childcare centre located to the west of the subject site. All essential services are currently connected to the site, with stormwater from the existing hardstand areas draining to the existing stormwater infrastructure on South Street.

The surrounding development in the north and east comprise predominantly detached single dwellings (one and two storeys in height). As stated above, a childcare centre is located to the west, with the Pacific Dunes Golf Course located to the south of the site.

Assessment Outcomes

The application includes a one into two lot Torrens title subdivision that requires consent under Clause 2.6 of LEP2013.

The proposed development is compliant with Clause 4.1 – Minimum Subdivision Lot Sizes of LEP2013 and Chapter C1 – Subdivision of Port Stephens of the Development Control Plan (DCP2014). A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 4)**.

The development addresses the objectives of the zone by providing the opportunity for additional residential development to cater for the housing needs of the community. The proposal will not have any significant impacts on the amenity of adjoining properties.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	Yes		Section 94 applies to the development.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Policy.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	High	Approve the application as recommended.	Yes
There is a risk that if the application is refused, available development opportunities for residential subdivision may not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development will result in positive economic, social and environmental outcomes. The proposed development represents a one into two lot Torrens title subdivision and will result in an additional residential lot to service the needs of the community.

The proposed subdivision will reinforce the residential character in the locality and will act as a transition between the R2 zone in the south and the R5 zoned land in the north. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

The proposed additional lot has adequate site access for vehicles and is of a size which can easily accommodate a future dwelling. The future dwelling design will be subject to a separate assessment.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process, including through the public notification process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by a range of Council's internal specialists. The application was referred to Council's Engineering Section and Section 94 Officer for comment. The application was supported unconditionally by Council's Engineering Section, general conditions of consent were provided by Council's Building Surveyor, and the proposal attracted Section 94 contributions for which a condition is proposed.

External

Submissions from 57 individuals were received in relation to the proposed development. This included one (1) supporting submission and 56 submissions objecting to the proposal. The issues identified in the submissions are discussed in further detail below.

Issue Raised	Comment
Existing streetscape/character	Council believes the future development on the lots will not alter the character or amenity of the area. The proposed density can be achieved under the R5 zoning via the construction of a dual occupancy. It is therefore considered that the additional development potential would therefore not be out of character with development permitted or recently undertaken in the adjacent R5 zone.
Road Networking and Parking / Conflicts with access to childcare centre	The location and width of the existing access driveway was considered sufficient to service the additional residential lot. There is sufficient capacity in the local road network to cater for the additional traffic movement associated with the additional residential lots. Any future application for residential development on the new lot will be required to provide parking onsite.
Increase demand for services	The application is for subdivision. It is noted that the subject site is zoned R2 which facilitates future residential development. It is considered that the proposal will not impact significantly on the services in the area.
Property Prices	No evidence that the proposal would impact on property prices was provided.

The issues raised in the submissions have been considered in the context of the proposal, surrounding locality and relevant legislation. The issues raised have been determined to not be of significance as to warrant refusal or modification of the proposed development.

CONCLUSION

The proposed development is considered to suitably address the requirements of the Port Stephens Local Environmental Plan 2013 and Port Stephens Development Control Plan 2014. Mitigation measures proposed in the application, in addition to the proposed conditions of consent, are anticipated to adequately address any potential impacts of the development.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Location Plan.
- 2) Signed Call to Council Form.
- 3) Consent Conditions.

4) Assessment Report.

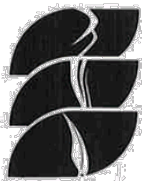
COUNCILLORS ROOM

1) DA Plans.

TABLED DOCUMENTS

Nil.





CALL TO COUNCIL FORM
DEVELOPMENT APPLICATION

PORT STEPHENS
COUNCIL

I, Councillor

Peter John Karr

require Development Application Number

DA 16-2017-480-1

for

16 Sylvan Avenue

at

Medowie

to be subject of a report to Council for determination by Council.

Reason:

The reason for this call-up to Council is *because of the magnitude of community unrest over a similar item recently that went on for 7 months at 111 South Street Medowie.*

Declaration of Interest:

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? ~~Yes~~/No (delete the response not applicable).

If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed



Date:

18/7/17



Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

SCHEDULE 1

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- confirm and clarify the terms of Council's Approval;
- identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance; and
- provide for the ongoing management of the development.

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. The development shall be carried out in accordance with the stamped approved plans and documentation as listed below, except where modified by any condition of this consent or as shown in red colour on the plans.

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Proposed Subdivision (1 Sheet)	6120 PS-V1	2 of 3	22/06/2017	Le Mottee Group

Note 1: In the event of any inconsistency between the:

- Approved plans and the conditions, the conditions will prevail; or
- Approved plans and supplementary documentation, the plans will prevail.

Note 2: The consent relates only to those works indicated as proposed on the approved plans. No assessment has been undertaken of those structures marked as existing, and this consent does not extend to include any such structures.

Note 3: Modifications to the approved plans will require the lodgement and consideration by Council of a modification application pursuant to Section 96 of the *Environmental Planning and Assessment Act 1979*.

CONDITIONS THAT IDENTIFY OTHER APPROVALS REQUIRED

2. **Prior to issue of the Construction Certificate and/or Subdivision Certificate** (whichever occurs first), a Compliance Certificate under Section 50 of the Hunter Water Act 1991, for this development, shall be submitted to the Principle Certifying Authority.

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Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

3. **Prior to the Issue of a Construction Certificate**, an approval under section 68 of the *Local Government Act 1993* approval shall be obtained for stormwater drainage works that discharge into a public system or public land.

CONDITIONS THAT IDENTIFY CONTRIBUTIONS AND FEES

4. A monetary contribution is to be paid to Council for the provision of 1 additional dwelling, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,168.00	\$1,168.00
Public Open Space, Parks & Reserves	\$2,561.00	\$2,561.00
Sports and Leisure Facilities	\$6,913.00	\$6,913.00
Cultural and Community Facilities	\$2,465.00	\$2,465.00
Road Works	\$1,627.00	\$1,627.00
Fire & Emergency Services	\$226.00	\$226.00
Medowie Traffic and Transport	\$2,548.00	\$2,548.00
Total		\$17,508.00

Payment of the above amount shall apply to Development Applications as follows:

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

The following conditions are to be complied with, to the satisfaction of the Certifying Authority, prior to the issue of the Construction Certificate.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions are to be complied with prior to the issue of a Construction Certificate.

5. **Prior to the issue of a Construction Certificate**, detailed engineering plans for subdivision and/or civil works in accordance with the approved plans are to be submitted to the Certifying Authority. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a. Plans for all civil works within a road reserve, approved by the Roads Authority and consistent with this condition:
 - b. Stormwater connection to existing kerb inlet pit within Sylvan Avenue.

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Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATIONS OR CONSTRUCTION

The following conditions are to be complied with prior to the commencement of works on the subject site(s).

6. **At least two days prior to the commencement of works**, the applicant shall submit to Council a "Notice of Commencement and Appointment of Principal Certifying Authority" form.
7. **Prior to the commencement of works**, the applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists.
8. **Prior to the commencement of work**, a 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people. No materials, waste or the like are to be stored on the all-weather access at any time except with the agreement of the Principle Certifying Authority.
9. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.
10. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council and must be regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.

CONDITIONS TO BE SATISFIED DURING WORKS

The following conditions are to be complied with during works.

11. A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifying Authority.
12. The Principal Contractor (or Owner/Builder) shall erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work. The sign shall also

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Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

display the name, address and telephone number of the Principal Contractor for the work (or Owner/Builder) and shall state that unauthorized entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

13. All building work shall be carried out in accordance with the requirements of the Building Code of Australia.
14. A temporary toilet(s) shall be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided shall be one toilet per 20 persons or part thereof employed on the site at any one time. The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
15. Unless otherwise approved by Council in writing, all general building/demolition work shall be carried out between the hours of:
 - a. 7.00am to 5.00pm Monday to Saturday
 - b. No construction is to be carried out at any time on a Sunday or a public holiday.

Any work performed outside the abovementioned hours or on a public holiday that may cause offensive noise, as defined under the *Protection of the Environment Operations Act 1997*, is prohibited.
16. No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site unless approved by Council in writing. Where building activity cannot avoid occupation of the public road reserve, (such as, for the erection of hoarding, scaffolding, partial closure) separate approval from Council for the use of the road reserve is required.
17. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.
18. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.
19. The only fill material that may be received at the development site is:
 - a. Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act 1997 (POEO)*; or



Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

- b. Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

20. All associated excavations and backfilling associated with the development must be executed safely and in accordance with the appropriate professional standards, and must be properly guarded and protected to prevent them from being dangerous to life or property.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions are to be complied with prior to the issue of a Subdivision Certificate by Council.

21. **Prior to the issue of a Final Occupation Certificate or Subdivision Certificate**, whichever occurs first, all civil works are to be completed to the satisfaction of the principal Certifying Authority.
22. **Prior to the issue of a Final Occupation Certificate or Subdivision Certificate**, whichever occurs first, the works approved under the Roads Act approval must be completed and a compliance certificate must be obtained from the Roads Authority.
23. **Prior to issue of the Subdivision Certificate**, one signed original copy of the original plans and/or documents, and final plan of survey/title, shall be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.
24. **Prior to issue of the Subdivision Certificate**, a Compliance Certificate under Section 50 of the *Hunter Water Act 1991*, for this development, shall be submitted to the Principle Certifying Authority.
25. The deposited plan and 88B instrument submitted with the subdivision certificate application is to include details of encumbrances under Section 88B of the *Conveyancing Act 1919*, required to carry out the approved development. In particular, the title of the respective approved lots shall be endorsed with the following:

- a. Rights of carriageway



Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

Port Stephens Council shall be nominated as the Authority to release, vary or modify the above restrictions.

26. **Prior to the issue of a Subdivision Certificate**, evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a. Telecommunications;
- b. Electricity;
- c. Water; and
- d. Sewer.

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

27. **Prior to the issue of a Subdivision Certificate**, a registered surveyor shall provide certification to the satisfaction of the Principal Certifying Authority that all services (e.g. drainage, stormwater, water supply, gas, electricity, telephone) as constructed are contained within each lot, or within appropriate easements to accommodate such services.

ADVISORY NOTES

The following advice is limited in scope and should not be understood to encompass all areas of responsibility of the consent holder, relating to the development.

- A. The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.
- B. Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables. www.dialbeforeyoudig.com.au
- C. **Prior to occupying the development or Subdivision Certificate Release**, whichever occurs first, Council's Spatial Services Team should be contacted via email at: addressing@portstephens.nsw.gov.au to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering. Note: any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
- D. You are advised that, in accordance with the EP&A Act, (sec.109F) payment of the building industry Long Service Leave levy, where applicable, must be paid **prior to issue of any Construction Certificate**.

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Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

- E. The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate

SCHEDULE 2

RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

NOTES

- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.

SCHEDULE 3

APPROVAL UNDER SECTION 78A (3)

Nil

SCHEDULE 4

APPROVAL UNDER SECTION 91

Nil

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ITEM NO. 4

FILE NO: 17/201851
RM8 REF NO: PSC2016-00122

PLANNING PROPOSAL FOR PART OF LOT 1 DP 1215257 (795 MEDOWIE ROAD MEDOWIE)

REPORT OF: MARC GOODALL - ACTING STRATEGY & ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Acknowledge submissions received during the public exhibition of the planning proposal to rezone part of Lot 1 DP 1215257 (795 Medowie Road) **(ATTACHMENT 1)** from R2 Low Density Residential to B2 Local Centre;
 - 2) Adopt the planning proposal as publicly exhibited **(ATTACHMENT 2)**;
 - 3) In accordance with the *Environmental Planning and Assessment Act 1979 (s59)* (NSW) forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the *Port Stephens Local Environmental Plan 2013* to implement the proposal.
-

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor John Nell That the recommendation be adopted.
--	--

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

Councillor Ken Jordan returned to the meeting at 8:56pm in Open Council.

**ORDINARY COUNCIL MEETING - 12 DECEMBER 2017
MOTION**

313	Councillor John Nell Councillor Giacomo Arnott It was resolved that Council: 1) Acknowledge submissions received during the public exhibition of the planning proposal to rezone part of Lot 1 DP 1215257 (795 Medowie Road) (ATTACHMENT 1) from R2 Low Density Residential to B2 Local Centre; 2) Adopt the planning proposal as publicly exhibited (ATTACHMENT 2); 3) In accordance with the <i>Environmental Planning and Assessment Act 1979</i> (s59) (NSW) forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the <i>Port Stephens Local Environmental Plan 2013</i> to implement the proposal.
------------	--

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to consider submissions received during the public exhibition of a planning proposal (the proposal) to rezone Council-owned land in the town centre of Medowie from R2 Low Density Residential to B2 Local Centre and recommend that Council adopt the proposal as exhibited.

Proponent: RPS Pty Ltd (on behalf of Council Property Services)
Subject Land: Part of Lot 1 DP 1215257 (795 Medowie Road)
Existing Zoning: R2 Low Density Residential
Proposed Zoning: B2 Local Centre
Classification: Operational Land

The Medowie Planning Strategy (the Strategy) was adopted by Council in December 2016 to guide future land use and planning in the area. It identifies additional land in the town centre for potential commercial use, including the subject land.

Following the submission and consideration of a formal request from the proponent, Council resolved in July 2016 to prepare a proposal to rezone the subject land from R2 Low Density Residential to B2 Local Centre to permit future development for commercial uses (with development consent). It has a total area of 1.7 hectares, (excluding road reserves) comprised of a 1.4 hectare area located south of Muir Street and a 0.3 hectare strip of land located north of Muir Street **(ATTACHMENT 1)**.

The proposal was placed on public exhibition from 8 June 2017 to 22 June 2017.

Two submissions were received from adjoining landowners. The key issues are:

1. Request for inclusion of adjoining land at the intersection of Medowie Road and Muir Street;
2. Concern for the potential effect on supply and demand for commercial land and retailing;
3. Demand for new public toilets in the town centre.

These issues are addressed in the consultation section of this report and in the submission summary table **(ATTACHMENT 3)**. It is recommended that Council proceed with the proposal for the subject land as exhibited.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

Assessing the planning proposal has no negative financial/resource implications.

The proponent has paid the relevant planning proposal assessment fees in accordance with Council's *Fees and Charges Schedule 2016-2017*. \$10,500 was paid for Stage 1 – Lodgement, \$22,000 for Stage 2 – Exhibition and \$7,673 will be paid if the proposal is supported by Council and prior to gazettal.

This report does not address the financial implications for Council in pursuing the proposal as a landowner.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		

MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

Source of Funds	Yes/No	Funding (\$)	Comment
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Environmental Planning and Assessment Act 1979

Council is the relevant authority for preparing the planning proposal under the *Environmental Planning and Assessment Act 1979* (NSW) (the Act).

The Department of Planning and Environment (the Department) previously issued a conditional gateway determination to Council allowing the proposal to proceed to exhibition. Those conditions have been satisfied, including the disclosure of Council's interest as landowner. Plan-making functions were not delegated to Council in this instance because of its ownership of the subject land.

Port Stephens Local Environmental Plan 2013

The proposal will amend the *Port Stephens Local Environmental Plan 2013* (LEP 2013) as follows:

- Amending the relevant Land Zoning Map for the subject land from R2 Low Density Residential to B2 Local Centre for the subject land;
- Amending the relevant Height of Building Map for the subject land from 9m to 8m;
- Amending the relevant Lot Size Map from 500m² for the subject land to no minimum lot size requirement.

The proposed mapping amendments are detailed within **(ATTACHMENT 1)**.

The proposed B2 Local Centre Zone provides flexibility for commercial and/or residential outcomes. It permits a range of commercial land uses including 'business' 'office' and 'retail' premises. It also permits 'multi dwelling housing' and 'shop top housing'. Its application is consistent with the Strategy.

Medowie Planning Strategy

The Strategy was adopted by Council in December 2016 and includes a town centre master plan. It aims to guide future land use and concentrate commercial development in the town centre to consolidate its role as the local 'heart' for social and economic activity. Key determinants to the location of commercial land include:

- Continuity with the existing B2 Local Centre Zone;

MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017

- Land with frontage to, and generally bound by, Medowie Road, Ferodale Road and Peppertree Road;
- Supply and demand for floorspace;
- Proximity to community facilities.

The inclusion of the large area of land south of Muir Street is directly consistent with the Strategy and town centre master plan. The small strip of land north of Muir Street is additionally included in the proposal in recognition that the strategy is a guide to potential future land use and the flexibility for commercial and/or residential uses of the B2 Local Centre Zone. Its inclusion will support development that is desirable for smaller businesses because of its small area and lot depth (in comparison to the large area south of Muir Street). It will be likely to create a precedent to encourage further potential rezoning along the northern side of Muir Street and improve land use compatibility on both sides of the road.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that proceeding with the proposal as exhibited will create a precedent for rezoning further additional land north of Muir Street in excess of what is required.	Medium	Reinforce that the strategy is a guide and that further information becomes available when each site is considered. Include the land north of Muir Street to provide diversity for new smaller commercial premises.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The subject land is cleared of vegetation except for two koala feed trees located at the end of Peppertree Road. Any future development should try to avoid their removal or provide compensatory planting.

There are positive social and economic implications from the planning proposal. The proponent estimates that future development of the subject land could create approximately 43 to 57 jobs at commencement of trading.

The proposal is estimated to provide enough retail floorspace in Medowie to satisfy total future supportable retail floorspace of 14,800m² in the year 2035 under a 'low growth' scenario. There is currently 9,200m² of occupied retail floorspace and the proposal is estimated to increase this by 5,100m² (to a total 14,300m²). Additional land is identified by the Strategy to accommodate any further market demand under a 'high growth' scenario.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section. The objective was to notify the public of the proposal and seek submissions prior to its final consideration by Council.

Internal

The proposal, as lodged by the proponent, was referred internally for comment on environmental, flooding and drainage and traffic matters. Concern for environmental and drainage matters resulted in lower-lying land west of Peppertree Road being excluded. No concern was raised in relation to traffic matters. The recommended subject land avoids concerns related to flooding and drainage and the environment.

External

The proposal was placed on public exhibition from 8 June 2017 to 22 June 2017. Two submissions were received. The key issues raised are:

- Request for inclusion of adjoining land at the intersection of Medowie Road and Muir Street;
- Concern for the potential effect on supply and demand for commercial land and retailing;
- Demand for new public toilets in the town centre.

The inclusion of additional land at the intersection of Medowie Road and Muir Street may have strategic planning merit. Its consideration would be subject to consideration of a separate proposal.

Concern about the potential effect on supply and demand for commercial land is addressed previously in this report. Land south of Muir Street is also directly identified in the Strategy for rezoning. Rezoning the subject land satisfies demand for the low growth scenario to the year 2035. To further reduce any risk Council may resolve to exclude the small strip of land north of Muir Street.

There is no requirement for the provision of public toilets with the proposal. The Strategy identifies two potential locations for their provision; near the subject land or further to the west (near the Medowie Shopping Village). The Port Stephens Strategic Asset Management Plan 2017-2027 lists investigating location and design for new toilet facilities in the commercial area as a long-term-future action. It should be acknowledged that additional commercial development will increase demand and there is an existing demand from the community for their provision.

The proposal was referred to the relevant NSW public authorities for comment. No objection was received from the Rural Fire Service or Roads and Maritime Services. Hunter Water Corporation has no objection and advises further liaison to ensure

development is effectively serviced and that future development will need to demonstrate a neutral or beneficial effect on water quality.

The Office of Environment and Heritage advised undertaking due diligence is not a mechanism to assess social values or the significance of objects or places for Aboriginal heritage. No change to the proposal is recommended in response to this issue. The subject land is already zoned R2 Low Density Residential and the extension of Peppertree Road, construction of Muir Street, and drainage works have already taken place in accordance with appropriate approvals. The due diligence report submitted by the proponent did not identify any Aboriginal sites or places and concluded there is no identified risk of harm, and that an Aboriginal Heritage Impact Permit is not required.

A detailed summary of planning submissions and a response is provided as **(ATTACHMENT 3)**.

The proponent has also provided a response to the issues raised **(ATTACHMENT 4)**.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

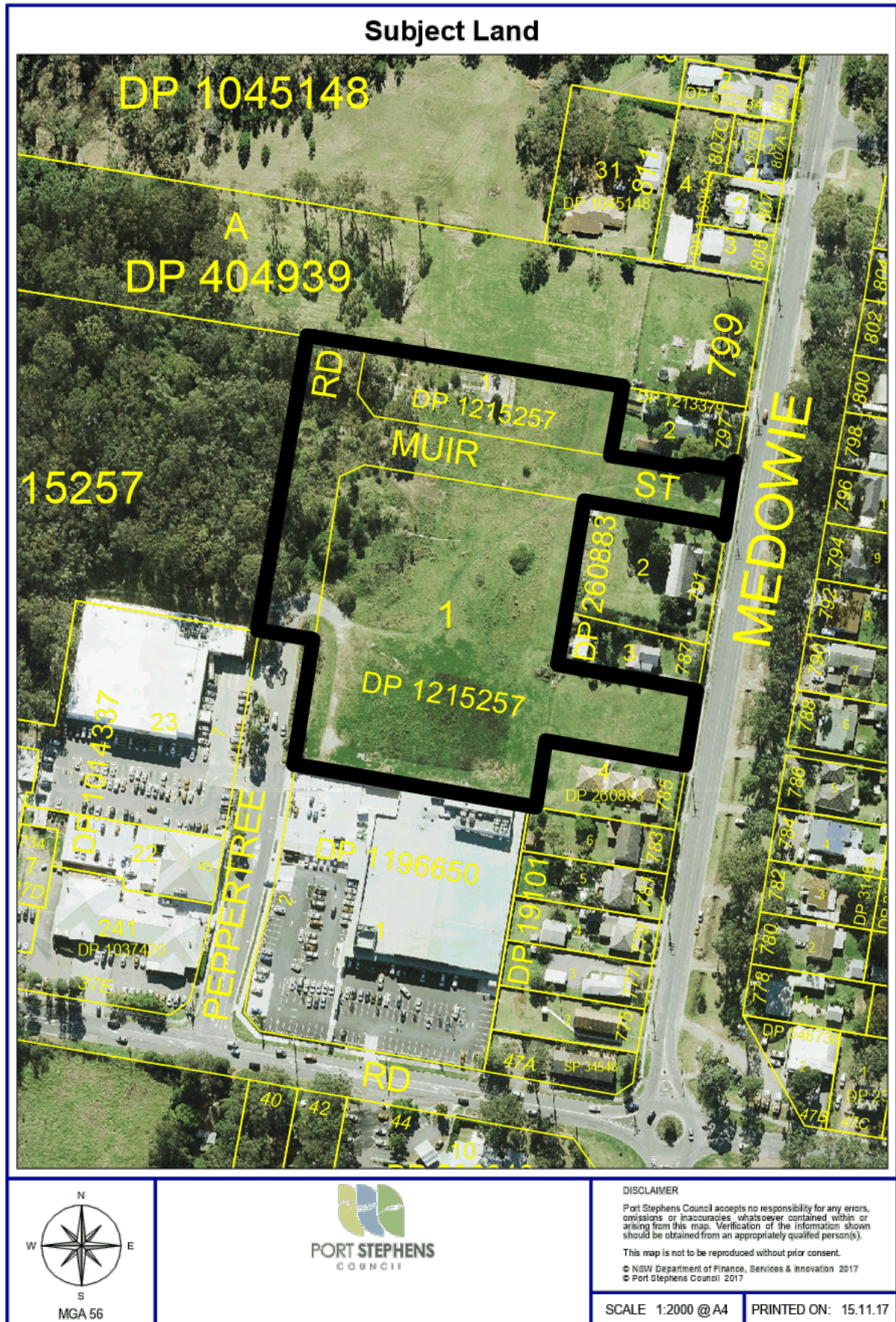
- 1) Subject Land.
- 2) Planning Proposal.
- 3) Submission Summary Table.
- 4) Proponent Response to Submissions.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.





ITEM 4 - ATTACHMENT 2 PLANNING PROPOSAL.

SUMMARY

Subject land:	Part of Lot 1 DP 1215257 (795 Medowie Road, Medowie)
Subject land area:	2.2 hectares (approximate and including road reserves)
Current zoning:	R2 Low Density Residential
Proposed zoning:	B2 Local Centre
Classification:	'Operational'
Additional Information (provided by RPS Pty Ltd, 20 March 2017, for Port Stephens Council):	<p>Supporting Commercial Floor Space Needs and Supply Analysis (Shop Retail Needs Assessment), RPS Australia East Pty Ltd, March 2017.</p> <p>Bushfire Constraints Assessment, RPS Australia East Pty Ltd, RPS Australia East, 22 February 2017.</p> <p>Aboriginal Due Diligence Report, RPS Australia East, 6 February 2017.</p> <p>Addendum Biodiversity Assessment Letter Report, RPS Australia East Pty Ltd, 7 February 2017.</p> <p>Updated Traffic Assessment, RPS Australia East Pty Ltd, 21 February 2017.</p> <p>Preliminary Flooding and Stormwater Review, GCA Engineering Solutions, 2 March 2017.</p>

The site is located in the Medowie town centre and adjacent to existing commercial and residential development. It refers only to the flood-free and cleared part east of Peppertree Road. It includes a large central area bound by Peppertree Road, Muir Street and Medowie Road and a smaller strip of land north of Muir Street.

The planning proposal seeks to rezone approximately 2.2 hectares of land (1.7 hectares excluding road reserves) from R2 Low Density Residential to B2 Local Centre. The purpose of the planning proposal is to facilitate its potential development for commercial use consistent with local strategic planning set down in the *Medowie Planning Strategy*. The Strategy identifies the part of the site bound by Peppertree Road and Muir Street within a commercial precinct, and the small strip of land north of Muir Street within a residential precinct (the proposed B2 Local Centre zone is able to accommodate both commercial development and multi-dwelling housing).

The site is owned by Port Stephens Council and is classified as 'operational land' permitting its potential sale and/or development.

Figure 1 Subject Land



PART 1 – OBJECTIVE OF THE PLANNING PROPOSAL

The objective of the planning proposal is to facilitate the potential commercial development of the land consistent with local strategic planning for Medowie.

PART 2 – EXPLANATION OF THE PROVISIONS TO BE INCLUDED IN THE LEP

The objective of the planning proposal will be achieved by amending the *Port Stephens Local Environmental Plan 2013* as follows:

- Amending the Land Zoning Map (LZN_004B) by rezoning the site from R2 Low Density Residential to B2 Local Centre (in accordance with the Draft Land Zoning Map at **ATTACHMENT 2**).
- Amending the Lot Size Map (LSZ_004B) to remove the minimum lot size provisions on that part of the site to be zoned B2 Local Centre (in accordance with the attached Draft Height of Buildings Map at **ATTACHMENT 3**).
- Amending the Height of Building Map (HOB_004B) to show the maximum height of building as 8m on that part of the site to be zoned B2 Local Centre (in accordance with the attached Draft Height of Buildings Map at **ATTACHMENT 4**).

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PART 3 – JUSTIFICATION FOR THE PLANNING PROPOSAL

SECTION A – Need for the Planning Proposal

Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of the identification of Medowie as a proposed urban area in local and State planning strategies. It seeks to facilitate potential additional commercial development within the town centre.

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

The objective of the planning proposal is best achieved by an amendment to the zoning and associated provisions for the site under the *Port Stephens Local Environmental Plan 2013*. The amendments will permit the use of part of the site for a range of commercial purposes. It will also continue to permit multi-dwelling housing and additionally permit shop-top housing. It is proposed to proceed with the planning proposal now to enable its consideration in a timely manner to facilitate potential development in accordance with strategic planning for Medowie.

SECTION B – Relationship to the Strategic Planning Framework

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

Hunter Regional Plan 2036

Medowie is located on the periphery of the indicative Greater Newcastle Metropolitan Area and is listed as a centre of local significance. It is in proximity to the Newcastle Airport Transport Gateway and is a 15 minute drive to the strategic centre of Raymond Terrace. It has good access to access existing and growing employment areas at Newcastle Airport, Tomago, Heatherbrae and Raymond Terrace. The following table demonstrates the consistency of the planning proposal to the relevant *Regional Growth Plan* Goals and Directions.

Table 1 Hunter Regional Growth Plan – Response to Relevant Goals & Directions

Goal 1 – The leading regional economy in Australia
Direction 1 Grow Greater Newcastle as Australia's next metropolitan city
Response: The planning proposal will assist Greater Newcastle to grow as a metropolitan city and contributes to creating compact communities that allow 95% of people to live within a strategic centre (Raymond Terrace).
Direction 6 Grow the economy of Port Stephens
Response: The planning proposal provides additional commercial land to grow the economy of Medowie including taking advantage of its proximity to the major economic drivers of RAAF Base Williamstown and Newcastle Airport and Tomago. The regional centre of Raymond Terrace is 15km to the west.
Goal 2 A biodiversity-rich natural environment
Direction 15 Sustain water quality and security
Response: The subject land is located within the Grahamstown Dam Drinking Water Catchment. Any future development will need to be designed to achieve a neutral or beneficial effect on water quality.

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Goal 3 Thriving communities
Direction 17 Create healthy built environments through good design
Future commercial development on the site will reinforce the town centre as a main attractor and reinforce its role as the commercial and social 'heart' of Medowie.
Direction 18 Enhance access to recreational facilities and connect open spaces
The planning proposal will enhance the town centre as a main attractor for the commercial and social 'heart' of Medowie. Recreational facilities are also located within the town centre. Planning is in place to link these areas by shared-use pathways.
Direction 20 Revitalise existing communities
Future commercial development on the site will help to revitalise the town centre and reinforce the town centre as a main attractor and reinforce its role as the commercial and social 'heart' of Medowie.
Goal 4 Greater housing choice and jobs
Direction 21 Create a compact settlement
The planning proposal concentrates commercial development within the 'core' of the commercial area of Medowie, contributing towards a compact settlement.
Direction 22 Promote housing diversity
The proposed B2 zone retains permissibility of multi-dwelling housing and includes shop-top housing. The location of the land within the town centre retains opportunity for housing in proximity to services.
Direction 24 Protect the function economic functions of employment land
The planning proposal promotes the role of the existing town centre as the focus for commercial activity and employment land.
Direction 26 Deliver infrastructure to support growth and communities
Infrastructure is available to service the site.

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5. Is the planning proposal consistent with the local Council's Community Strategic Plan or other local strategic plan?

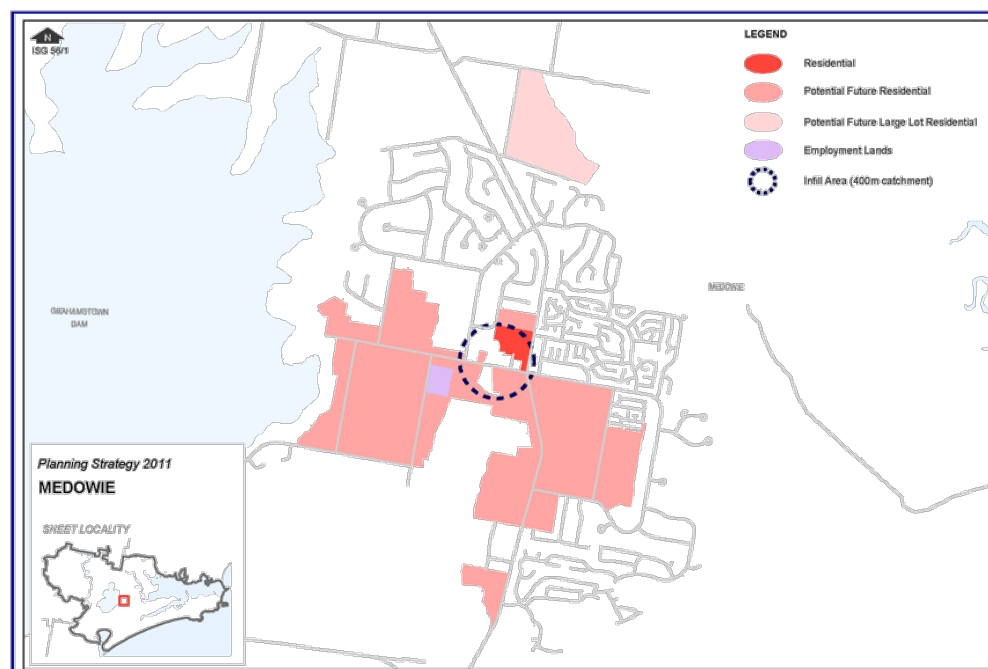
Port Stephens Integrated Plans 2013-2023

The *Port Stephens Integrated Plans* (incorporating the combined *Community Strategic Plan 2013-2023*; *Delivery Program 2013-2017*; and *Operational Plans 2016-2020*). The planning proposal is consistent with the relevant theme of Sustainable Development; Delivery item 3.3.1 to provide strategic land use planning services; and Action item 3.3.1.9 to review and prepare statutory plans (local environment plan, development control plan and planning proposals).

Port Stephens Planning Strategy 2011-2036

The *Port Stephens Planning Strategy* identifies Medowie for future growth as a Priority 1 Infill and New Release Area. The site is identified as residential and within an infill area (400m) (the broad mapping in the *Port Stephens Planning Strategy* is superseded by the more detailed and up-to-date planning in the *Medowie Planning Strategy*). Under the hierarchy of commercial centres the strategy identifies Medowie as a 'town centre' accommodating shopping and business for the surrounding district, including health and professional services mixed with medium density housing.

Figure 2 Port Stephens Planning Strategy



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Medowie Planning Strategy

Council adopted the *Medowie Planning Strategy* (including town centre master plan) to manage urban growth at a local level to year 2036. It identifies the part of the site bound by Medowie Road, Peppertree Road and Muir Street within a commercial precinct. The consistency of the planning proposal with the five key principles of the Medowie Planning Strategy is outlined in the following table.

Table 2 Medowie Planning Strategy - Response to Key Principles

Principle 1 Development is supported by infrastructure
This principle is that residential release areas are targeted on the expansion of existing areas and main transport routes (Medowie Road and Ferodale Road) with good access to community facilities. The planning proposal is consistent with this principle because reinforces the town centre as a commercial, recreational and social centre with transport infrastructure links to surrounding residential areas.
Principle 2 The town centre is the focus for commercial and community activity
This principle provides that commercial development will be focussed within the existing town centre and guided by the town centre master plan. The objective is to consolidate the town centre as the 'heart' for the social and economic life of the community. Infrastructure works include: roads (in a grid layout); a town square; new public toilets; and shared paths. The planning proposal is consistent with this principle because it consolidates the town centre as the 'heart' of the social and economic life of the community. It provides further impetus for delivering additional town centre facilities.
Principle 3 Rural residential character is balanced with urban development.
This principle is not applicable to the planning proposal.
Principle 4 - Development has a neutral or beneficial effect on water quality and no increase in flooding impacts.
Future development of the site will need to demonstrate adequate management of water quality, drainage and flooding in accordance with DCP requirements. This is appropriate within the context of the existing R2 Low Density Residential zone and the proposed B2 Local Centre zone.
Principle 5 – Habitat & key corridors are improved or maintained
The planning proposal is consistent with this principle because it will not impact on key habitat and key corridors. There are two koala feed tree species at the end of Peppertree Road. Any future development should try to avoid their removal or provide compensatory planting.

[illegible]

[illegible]

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6. Is the planning proposal consistent with applicable State environmental planning policies?

Table 3 Relevant State Environmental Planning Policies

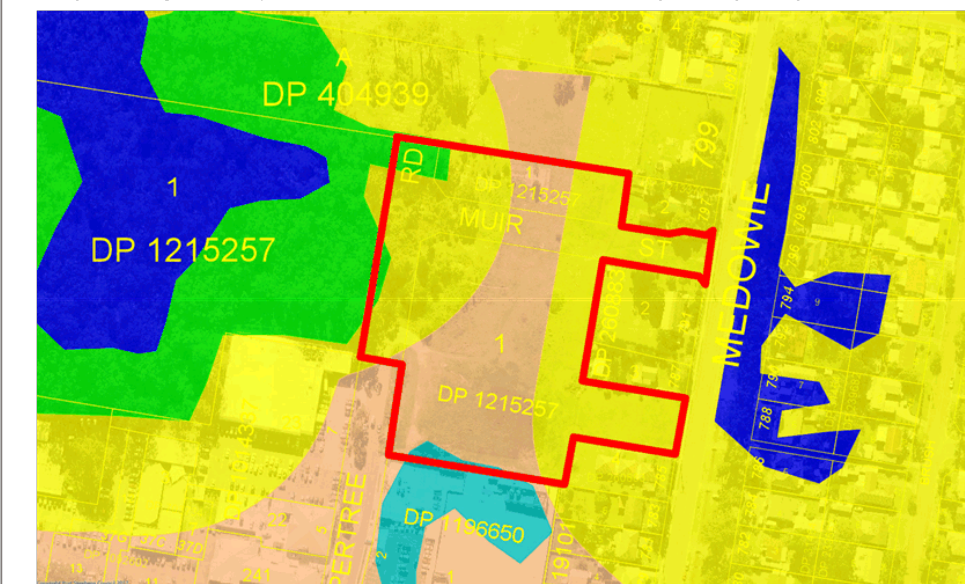
SEPP 44 Koala Habitat Protection

The *Port Stephens Comprehensive Koala Plan of Management* (CKPOM) is applied in Port Stephens LGA for the purposes of implementing SEPP 44.

The relevant objectives of the CKPOM are to:

- Evaluate and rank habitat throughout the LGA;
- Identify priority conservation areas and strategies to protect significant habitat and populations;
- Identify threats;
- Provide for the long-term survival of populations by addressing conservation strategies to effectively address each of the threats;
- Provide for the restoration of degraded areas;
- Ensure that adequate detail is provided with development applications in order to assess, minimise and ameliorate likely impacts;
- Provide guidelines and development standards to protect koalas and habitat; Provide for the effective implementation and monitoring of the CKPOM.

Impacts on koala habitat because of the planning proposal are limited. The site is already zoned R2 Low Density Residential and is effectively cleared of vegetation. There are two preferred koala feed trees in the immediate area of the future north-south extension to Peppertree Road that within an area mapped as 'Preferred 100m Buffer over Marginal Habitat' (shown light green). Council koala habitat mapping shows the remainder of the subject land as 'Link Over Cleared Land' (shown light brown) and '100m Buffer Over Cleared Land' (shown yellow).





ITEM 4 - ATTACHMENT 2 PLANNING PROPOSAL.**b) Allow for only low impact development within areas of Supplementary Koala Habitat and Habitat Lining Areas**

The habitat within the site (ie the two trees) is Preferred 100m Buffer over Marginal Habitat and does not provide further connectivity to the east to additional areas of suitable habitat for koalas.

c) Minimise the removal of any individuals of PKH food trees, wherever they occur on the site.

The two preferred koala feed trees have the potential to be removed. These two trees provide habitat for the koala and are an extension of a larger more intact area of mapped Preferred Koala Habitat to the west. Future development of the site should carefully consider the retention (avoidance) of these trees to minimise impacts on koala foraging habitat. If the removal of these two trees is proposed, the loss should be matched with compensatory planting.

d) Not result in development which would sever koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.

Vegetation and habitat to the east of the site beyond the two trees is separated by a hostile barrier (i.e. Medowie Road and ribbon residential development fronting this road) limiting the potential for successful east-west koala movements through the site. Notwithstanding, there is potential for a koala to attempt passage through the site. These impediments could be mitigated through plantings within the roadside environment. In a developed state, new structures built within the site would further impede an already compromised movement pathway for koalas through the site.

Any inconsistency of the planning proposal with the performance criteria for rezoning requests is of minor significance. Development impacts are suitable to address at the development application stage.

SEPP 55 Remediation of Land

This SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Assessment

The site is currently zoned R2 Low Density Residential which already permits residential development. The proposed B2 Local Centre Zone also permits residential development in the form of multi-dwelling housing. There is no effective change from the current zoning in terms of any increased risk from any possible contamination i.e. residential development is already permitted. A preliminary assessment was previously considered required prior to exhibition for review prior to the rezoning of the subject land to confirm the site is suitable for the proposed use (i.e. residential to commercial) however was not provided. This matter can be further addressed if necessary at development application stage.

Consistency with this SEPP can be confirmed at development application stage.

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7. Is the planning proposal consistent with applicable Ministerial Directions?

Table 4 Relevant Section 117 Ministerial Directions

Direction 1.1 Business and Industrial Zones
<p>Objectives</p> <p>The objectives of this direction are to: encourage employment growth in suitable locations; protect employment land in business and industrial zones; and support the viability of identified strategic centres.</p> <p>When this direction applies</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</p> <p>What a relevant planning authority must do if this direction applies</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> • give effect to the objectives of this direction, • retain the areas and locations of existing business and industrial zones, • not reduce the total potential floor space area for employment uses and related public services in business zones, • not reduce the total potential floor space area for industrial uses in industrial zones, and • ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning. <p>Consistency</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p> <p>justified by a strategy which:</p> <ul style="list-style-type: none"> • gives consideration to the objective of this direction, and • identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and • is approved by the Director-General of the Department of Planning, or • justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or • in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or • of minor significance. <p>Assessment</p> <p>This direction applies because the planning proposal seeks to rezone additional land for commercial use. It is consistent with this direction because it gives effect to its objectives by encouraging employment growth in the town centre, adding to existing business employment land</p>

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and supporting the viability of strategic centres. It will create opportunity for additional commercial development within the existing town centre consistent with local strategic planning. The economic assessment provided by the proponent indicates that the amount of proposed commercial land is suitable to meet future demand.

The Planning Proposal is consistent with this direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

Objective

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

What a relevant planning authority must do if this direction applies

In the preparation of a planning proposal affected by this direction, the relevant planning authority must:

- consult the Director-General of the Department of Primary Industries (DPI) to identify any:
- resources of coal, other minerals, petroleum or extractive material that are of either State or regional significance, and
- existing mines, petroleum production operations or extractive industries occurring in the area subject to the planning proposal, and
- seek advice from the Director-General of DPI on the development potential of resources identified, and
- identify and take into consideration issues likely to lead to land use conflict between other land uses and the development of identified resources.

Where a planning proposal prohibits or restricts development of identified resources or proposes land uses that may create land use conflicts, the relevant planning authority must:

- provide the Director-General of DPI with a copy of the planning proposal and notification of the relevant provisions,
- allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the planning proposal, and
- include a copy of any objection and supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) before undertaking community consultation in satisfaction of section 57 of the Act.

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Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the provisions of the planning proposal that are inconsistent are of minor significance.

Assessment

This direction applies because the planning proposal will have the effect of restricting the potential development of coal, minerals, petroleum or extractive materials because of future subdivision for rural residential development. Its relevance is limited, however, because the site is already zoned for residential development; is located within an existing town centre; and is surrounded by residential development.

Any inconsistency of the planning proposal with this direction is of minor significance.

Direction 2.1 Environment Protection Zones

Objective

The objective of this direction is to protect and conserve environmentally sensitive areas.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which:
 - gives consideration to the objectives of this direction,
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- is of minor significance.

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Assessment

The land proposed for rezoning is effectively cleared and is not identified for environmental protection purposes (current zoning is R2 Low Density Residential).

The planning proposal is consistent with this direction.

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

A planning proposal must contain provisions that facilitate the conservation of:

- items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or
- the provisions of the planning proposal that are inconsistent are of minor significance.

Assessment

There are no items of European heritage significance on the site or listed in the *Port Stephens Local Environmental Plan 2013*.

The proponent has provided an *Aboriginal Heritage Due Diligence Report* for exhibition with the planning proposal (refer to *Aboriginal Heritage Due Diligence Report* RPS, 6 Feb 2017). It found that, based on the outcome of the desktop assessment and visual inspection, no Aboriginal heritage sites or places were identified. It found no identified risk of harm and an Aboriginal Heritage Impact Permit is not required for the proposed activity. It makes five recommendations to manage risk with any future development on the site.

Future development on the site will also be subject to the existing heritage provisions of the *Port Stephens Local Environmental Plan 2013* and the *National Parks and Wildlife Act 1974* (NSW) to manage potential for heritage impacts. Any inconsistency with this direction is of minor significance in the planning proposal process under this circumstance. The planning proposal was

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referred to the Worimi Local Aboriginal Land Council and no comment was received.

OEH advised that undertaking due diligence is not a mechanism to assess social values or the significance of objects or places for Aboriginal heritage. Notwithstanding this, it is recommended that Council proceed with the recommended planning proposal. The subject land is already zoned R2 Low Density Residential. Earthworks, in preparation for future development, have already taken place in accordance with appropriate approvals (extension of Peppertree Road, construction of Muir Street, and drainage works). The due diligence report did not identify any Aboriginal sites or places and concluded there is no identified risk of harm, and that an Aboriginal Heritage Impact Permit is not required.

The existing provisions of clause 5.10 *Heritage conservation* of the *Port Stephens Local Environmental Plan 2013* are suitable to manage potential heritage

Any inconsistency of the planning proposal with this direction is of minor significance.

Direction 3.1 Residential Zones

Objectives

The objectives of this direction are: to encourage a variety and choice of housing types to provide for existing and future housing needs; To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; To minimise the impact of residential development on the environment and resource lands.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:

- an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- any other zone in which significant residential development is permitted or proposed to be permitted.

What a relevant planning authority must do if this direction applies

A planning proposal must include provisions that encourage the provision of housing that will:

- broaden the choice of building types and locations available in the housing market, and
- make more efficient use of existing infrastructure and services, and
- reduce the consumption of land for housing and associated urban development on the urban fringe, and
- be of good design.

A planning proposal must, in relation to land to which this direction applies:

- contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- not contain provisions which will reduce the permissible residential density of land.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal

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that are inconsistent are:

- justified by a strategy which:
 - gives consideration to the objective of this direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- of minor significance.

Assessment

This direction applies because the planning proposal seeks to rezone land from R2 Low Density Residential to B2 Local Centre. It is consistent because the proposed B2 Local Centre zone retains the permissibility of multi-dwelling housing on the site.

The planning proposal is consistent with this direction.

Direction 3.4 Integrating Land Use and Transport

Objectives

The objective of this direction is to ensure that development achieves the following objectives: Improving access to housing, jobs and services by walking, cycling and public transport; Increasing the choice of available transport and reduce dependence on cars; Reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car; Supporting the efficient and viable operation of public transport services; Providing for the efficient movement of freight.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

What a relevant planning authority must do if this direction applies

A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which:
 - gives consideration to the objective of this direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal

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<p>relates to a particular site or sites), and</p> <ul style="list-style-type: none"> o is approved by the Director-General of the Department of Planning, or • justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or • in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or • of minor significance. <p>Assessment</p> <p>This direction applies because the planning proposal relates to urban land. It facilitates the use of alternative modes of transport and gives effect to, and is consistent with, the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001) because the site is located within an existing town centre. Its development will reinforce the town centre as a centrally located destination, and encourage and reinforce greater use of alternative means of transport (e.g. walking, cycling and public transport).</p> <p>The planning proposal is consistent with this direction.</p>
<p>Direction 3.5 Development Near Licensed Aerodromes</p> <p>Objectives</p> <p>The objectives of this direction are: to ensure the effective and safe operation of aerodromes; to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and to ensure development for residential purposes of human occupation, if situated within ANEF contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p> <p>When this direction applies</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>In the preparation of a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome, the relevant planning authority must:</p> <ul style="list-style-type: none"> • consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome, • take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth, <p>for land affected by the OLS:</p> <ul style="list-style-type: none"> • prepare appropriate development standards, such as height, and • allow as permissible with consent development types that are compatible with the operation of an aerodrome • obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that

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encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Act.

A planning proposal must not relevantly rezone land for commercial or industrial purposes where the ANEF is above 30 and must include a provision to ensure that development meets AS 2021-2015 regarding interior noise levels.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which:
 - gives consideration to the objectives of this direction, and
 - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- of minor significance.

Assessment

The application of this direction to the planning proposal is limited. Medowie is located in the general vicinity of RAAF Base Williamtown and the Salt Ash Air Weapons Range. There are no aircraft noise attenuation requirements to meet AS 2021-2015 regarding aircraft noise attenuation. The site is located outside of ANEF contours and within an existing town centre. The proposed land use change is commercial which is less sensitive to aircraft noise than residential development. The site is not located within an area mapped as requiring affected by requirements for extraneous lighting. Any development of the site would be able to address any potential concern regarding airspace and height triggers or bird strike.

The planning proposal is consistent with this direction.

Direction 4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on acid sulfate soils planning maps.

What a relevant planning authority must do if this direction applies

The relevant planning authority must consider the *Acid Sulfate Soils Planning Guidelines* adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on acid sulfate soils planning maps as having a probability of acid sulfate soils being present.

A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on acid sulfate soils planning maps unless the relevant planning authority has considered an acid sulfate

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soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- of minor significance.

Assessment

Acid sulfate soils planning maps identify the site as 'Class 5' requiring consent for works within 500m of adjacent soil classes. This is the lowest risk classification and the application of this direction is of limited relevance. The planning proposal does not propose any intensification of land use because it is already zoned for urban development. This issue can be managed through the existing provisions of the *Port Stephens Local Environmental Plan 2013* and at development application stage.

The planning proposal is consistent with this direction.

Direction 4.4 Planning for Bushfire Protection

Objectives

The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

What a relevant planning authority must do if this direction applies

In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.

A planning proposal must:

- have regard to *Planning for Bushfire Protection 2006*,
- introduce controls that avoid placing inappropriate developments in hazardous areas, and
- ensure that bushfire hazard reduction is not prohibited within the APZ.

A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:

- provide an Asset Protection Zone (APZ) incorporating at a minimum:
- an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the

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incorporation of an APZ, within the property, and

- an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,
- contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- contain provisions for adequate water supply for firefighting purposes,
- minimise the perimeter of the area of land interfacing the hazard which may be developed,
- introduce controls on the placement of combustible materials in the Inner Protection Area.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Assessment

This direction applies because part of the site is mapped as bushfire prone. The planning proposal and *Bushfire Constraints Assessment* (RPS, 22 Feb 2017) has been referred to the RFS. RFS has no objection to the planning proposal proceeding, subject to future development demonstrating consistency with the provisions of *Planning for Bushfire Protection 2006*.

The planning proposal is consistent with this direction.

Direction 5.10 Implementation of Regional Strategies

The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy is of minor significance, and the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

Assessment

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Medowie was identified in the *Lower Hunter Regional Strategy* as a proposed urban area with boundaries to be identified through local planning. The *Lower Hunter Regional Strategy* is replaced by the *Hunter Regional Plan*. The consistency of the planning proposal with the goals and directions of the Hunter Regional Plan is set out previously.

Medowie is located on the periphery of the indicative Greater Newcastle Metropolitan Area and is listed as a centre of local significance. It is in proximity to the Newcastle Airport Transport Gateway and is a 15 minute drive to the strategic centre of Raymond Terrace. It has good access to access existing and growing employment areas at Newcastle Airport, Tomago, Heatherbrae and Raymond Terrace (regional centre).

The planning proposal is consistent with this direction.

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SECTION C – Environmental, Social and Economic Impact

8. 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 site is effectively cleared of vegetation. There are two preferred koala feed trees (*Eucalyptus robusta*) in the immediate area of the future north-south extension to Peppertree Road. Koalas, a threatened species, are known to inhabit the land on the opposite side of Peppertree Road that does not form part of this planning proposal.

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

Water Management

Improving or maintaining water quality is an important concern for rezoning and development in a large area of Medowie including the site because it is within the drinking water catchment for Grahamstown Dam. Water quality modelling demonstrating neutral or beneficial effect on water quality is proposed post-Gateway Determination.

Existing general water quality controls in the *Port Stephens Development Control Plan 2014 Chapter B4 Drainage and Water Quality* will apply to future development. There is also additional surety that future development will meet water quality management requirements at development application stage through the provisions of clause 7.8 *Drinking water catchments* of the *Port Stephens Local Environmental Plan 2013*. The objective of the clause is "...to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering water storages".

The *Medowie Flood Risk Management Study and Plan* indicates that the critical storm duration for the Campvale Swamp area is 72hr and for Ferodale Road culvert is 9hrs. Any on-site detention basin must consider these two critical durations for designing a future on-site detention system. The design must consider not only the post and predevelopment discharges, but also consider the volume increase due to the proposed development.

The proponent's *Preliminary Flood Study and Stormwater Review* (CGA Engineering Solutions, 2 March 2017) gives the following summary:

- The proposed B2 local centre zone boundary is not affected by the 1% AEP flood envelope predicted in the WMA Water 2012 flood study. Flooding is therefore not expected to form a significant constraint on development within the proposed B2 local centre zone.
- The area downstream of the site could be considered to have existing stormwater runoff conveyance capacity limitations.

It is likely that on-site stormwater detention measures will be required to address any increase in stormwater discharge flow rates from future development in the B2 local centre zone. These measures may take a variety of formats and should be integrated with the overall layout and engineering design of the particular development proposals, with a detailed analysis being included with the stormwater management plan to be prepared at Development Application.

Provided the on-site detention assessment and design is prepared correctly, development in the proposed B2 local centre zone will not further exacerbate existing stormwater conveyance capacity. The matter is one of a technical/design and financial nature and should not be considered a significant factor when determining if the proposed B2 local centre zone is appropriate for the site.

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- The site is located within a 'drinking water catchment' area. Future development proposals will need to demonstrate that stormwater runoff will be of equivalent quality (or better than) currently occurs. Hunter Water Corporation will also be provided with the opportunity to comment on proposals at the Development Application stage.

There are a many water quality treatment approaches available for consideration as part of future development planning and design. These include custom designed- and constructed measures in addition to a wide range of proprietary treatment solutions.

Provided the water quality treatment measures are designed and selected appropriately, and maintained diligently and in perpetuity, development in the proposed B2 local centre zone will be able to achieve the required water quality treatment targets. Stormwater quality is also a technical/design and financial matter and should not be considered a significant factor when determining if the proposed B2 local centre zone is appropriate for the site.

The information provided by the proponent provides conceptual information appropriate for rezoning stage to demonstrate that future development could meet NORBE requirements subject to development design and management.

Traffic and Transport

The site is in a good location to encourage the use of alternative means of transportation including public transport, walking and cycling. The *Medowie Traffic and Transport Study* (URAP, 2012) and the *Port Stephens Section 94 Development Contributions Plan 2007* identify and make provision for the future intersection upgrade works in the town centre that will become more pressing if the land is rezoned and developed for commercial purposes.

The proponent also submitted an updated traffic assessment (*SECA Solutions, 21 February 2017*). It makes the following conclusions:

- The *Traffic and Transport Study for Medowie* (and under review) has assessed the impact on the road network in Medowie associated with land use changes. The study has identified road improvements required to facilitate the land use changes however it is noted that the layout for the intersections at each end of Muir Street have been subsequently revised. These improvements will provide an acceptable level of service at each intersection associated with these traffic demands although a channelized right turn may be required at the intersection of Medowie Road and Muir Street in the future.
- Although the assumptions of the zoning of the subject land development site (Part Lot 1 DP 1215257) were not known for the study, it appears it has been assessed as a mix of commercial and residential land uses. As such, the following observations are made:
- If a rezoning option to create a predominantly residential land use is made, this would generate lower traffic volumes to those considered during the detailed design for the intersections on Muir Street as well as those considered throughout the traffic study.
- If a rezoning option to create a mixed of commercial and residential land is made, this would generate similar traffic volumes to those considered during the detailed design for the intersections on Muir Street as well as those considered throughout the traffic study.
- If a rezoning option to create a predominantly commercial land use is made, this would generate higher traffic volumes to those considered during the detailed design for the intersections on Muir Street as well as those considered throughout the traffic study.
- The recommended network improvements outlined within the traffic study provide considerable spare capacity to accommodate these vehicles and as such the proposed network improvements would be appropriate to support the commercial development of the site. It is noted however that the intersection of Medowie Road and Muir Road may require a channelized right turn lane in the future.

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

The economic assessment provided by the proponent considers 'low growth' and a 'high growth' scenarios.

- Low growth: total population of 15,700 people in 2036; and
- High growth: total population of 17,500 people in 2036.

It projects that population growth in the Medowie Catchment over the next 15 to 20 years is expected to support increased demand for local retail floor space in non-grocery and supermarket related floor space, such as specialty shops, retail service and food service.

The following conclusions and recommendations are made:

- *Residents within Medowie are projected to spend almost \$160 million during 2017. Based on strong projected population growth and an increase in expenditure, by 2035 residents within Medowie are projected to spend in excess of \$305 million per year on retail goods and services.*
- *Based on floor space sales densities and potential retail market shares for Medowie residents, RPS estimates that expenditure within Medowie could support at least 8,503sqm of floor space in 2011, increasing to at least 9,311sqm by 2020 and to 14,765 sqm in 2035. Taking into consideration existing supply by expenditure category, Medowie could sustain and additional 1,500 to 2,000 square metres of retail floorspace under the low growth scenario, growing to approximately 3,000 sqm of retail floor space by 2035.*
- *Based on employment floor space ratios for retail, the proposed development could sustain approximately 43 to 57 jobs upon commencement of trading, rising to 85 full time equivalent jobs by 2035.*
- *Due to the way this assessment has been conducted, driven by the conservative assumptions used in estimating the demand, total floorspace which could be supported within Medowie has the potential to exceed that estimated within this report.*

(RPS, March 2017, page 25)

There is currently approximately 9,200m² of occupied retail floorspace in Medowie (RPS, March 2017, page 18). Estimated future supportable retail floorspace under the low and high growth scenarios is provided in the following table:

Table 5 Retail Floorspace Demand

Year	2020	2025	2030	2035
Low Growth	9,300m ²	10,800m ²	12,600m ²	14,800m ²
High Growth	9,500m ²	11,400m ²	13,600m ²	16,400m ²

(extracted from RPS, March 2017, pages 18-19)

The planning proposal will rezone approximately 17,000m² of land for commercial use i.e. excludes road reserves). It is estimated to provide approximately 5,100m² of retail floorspace (after 70% 'land take' for parking and drainage etc.). This is estimated to effectively provide sufficient floorspace to meet future demand for a 'low growth scenario' to the year 2035.

ITEM 4 - ATTACHMENT 2 PLANNING PROPOSAL.**SECTION D – State and Commonwealth Interests****11. Is there adequate public infrastructure for the planning proposal?**

The subject land is located within the town centre and adequate public infrastructure is available to service future development.

12. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?**Rural Fire Service (RFS)**

Based upon an assessment of the information provided, the RFS raised no objections to the proposal subject to a requirement that the future development of the land complies with PFBP 2006. This includes, but is not limited to:

- i. Provision of APZs within the proposed lots in accordance with Table A2.4 for residential development or A2.6 for special fire protection purpose developments;
- ii. Access provided in accordance with the relevant design specifications; and
- iii. Services to be provided in accordance with section 4.1.3.

The site is suitable for rezoning in relation to planning for bushfire protection.

Roads and Maritime Services (RMS)

RMS requested the modelling data for the traffic assessment. The proponent confirmed, and Council advised RMS, that the proponent relied on the data and findings in the broader *Medowie Traffic and Transport Study* and that the modelling data is not available. No further response or comment was received from RMS.

Hunter Water Corporation (HWC)Water supply

The proposed rezoning is located in the Port Stephens Water Supply System, which is supplied from the Williamstown 1A Reservoir. There is sufficient current capacity for the estimated demand from the proposed rezoning area.

Wastewater Transportation

The proposed rezoning is located in the Medowie 10 Wastewater Pumping Station (WWPS) catchment area, which is within the Raymond Terrace Wastewater Treatment Works (WWTW) catchment.

Future upgrades to this station will be undertaken in the near term to ensure sufficient capacity is available to meet growth in the Medowie catchment as it occurs.

Wastewater treatment

There is sufficient capacity at the Raymond Terrace WWTW.

Water and sewer systems are dynamic by nature and, as such, capacity availability and system performance varies over time. As a consequence, the advice is indicative only. A detailed analysis of available capacity will be undertaken upon lodgement of a Notice of Formal Requirements

Water Resources

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HWC requires all development within drinking water catchments to demonstrate Neutral or beneficial Effect on water quality (NORBE).

Water quality is affected by erosion and sediment control practices during the construction stage and by wastewater (sewage) and stormwater management measures during operational stages. A development is considered to demonstrate NORBE if the development:

- i. Has no identifiable potential impact on water quality.
- ii. Will contain any water quality impact on the development site and prevent it from reaching any watercourse, waterbody or drainage depression on the site, or
- iii. Will transfer any water quality impact outside the site where it is treated and disposed of to standards approved by the consent authority.

All future development at the site will be expected to implement appropriate erosion and sediment control measures and connect to the reticulated sewer network.

As outlined in the *Preliminary Flooding and Stormwater Review* (GCA Engineering Solutions, 2017) prepared in support of the planning proposal, stormwater runoff from the site is expected to meet NORBE provided that treatment trains are appropriately selected, designed and maintained

Hunter Water anticipates that future development at the site will be referred under section 51 of the *Hunter Water Act 1991* (NSW), at which time assessment of specific erosion and sediment control and stormwater management measures would be undertaken.

HWC has no objection to the rezoning proposal, but further liaison with HWC should take place to ensure that the site is effectively serviced.

Response is that the information provided by the proponent provides conceptual information appropriate for rezoning stage to demonstrate that future development could meet NORBE requirements subject to development design and management.

A future development will need to comply with any requirements.

The proponent or future developer is recommended to liaise with HWC for any development requirements.

Office of Environment and Heritage (OEH)**Biodiversity**

OEH comment that because the rezoning will not seek to reduce the amount of environmental protection for the site section 117 Direction 2.1 *Environment Protection Zones* is not triggered. Council has asked OEH to comment on SEPP 44 (koala habitat protection) matters, as the development is likely to impact on two Swamp Mahogany (*Eucalyptus robusta*) trees, which are known koala feed trees, and will affect area classified as preferred 100m buffer over marginal habitat or link over cleared land. Koalas are recorded in the immediate vicinity and surrounding the site (e.g. on the western side of Peppertree Road). OEH supports the recommendations in the planning proposal including to either avoid the removal of the trees or to mitigate the loss of koala habitat with supplementary planting in the area.

Response is the existing zoning of the land is R2 Low Density Residential. It is cleared of vegetation except for two koala feed trees located at the end of Peppertree Road located outside of the land under consideration. Any future development should try to avoid their removal or provide compensatory planting.

ITEM 4 - ATTACHMENT 2 PLANNING PROPOSAL.Floodplain management

The *Medowie Flood Plain Risk Management Study and Plan* (FRMS&P) prepared on behalf of Council by WMA Water was completed in 2016. This study covers the area proposed to be rezoned and therefore no site specific flood study is required.

The proposal will result in intensification of use. The portion of the site to be rezoned is located outside of the current flood planning area and is therefore considered appropriate subject to future development approval and controls.

The downstream infrastructure is of limited capacity and the FRMS&P has recommended that on-site detention be provided in conjunction with future development in this part of the catchment.

The supporting information report prepared by RPS group dated 20 March 2017 provides information regarding provision of onsite detention and water quality controls for proposed development on the site. This is generally consistent with the FRMS&P recommendations. Design should take into account floods of all recurrence intervals and the critical times of concentration of the catchment as recommended in the FRMS&P. In addition the runoff from the site drains to the Campvale Drain. This drain in turn drains into the Campvale Drain Inundation Area (CDIA), which is subsequently pumped to Grahamstown Dam. The catchment is therefore classified as a terminal basin and as such is sensitive to volumes of runoff in addition to flow rates. Proposed future developments should provide for on-site capture and reuse of water as far as practicable to reduce volumes of runoff to the CDIA.

Many of the local roads within Medowie have been identified as being cut during flood events. Ferodale Road in the vicinity of this site becomes inundated. The flood study also shows flooding in two locations on Medowie Road near the site. It is unclear from the FRMS&P if the road is cut in these locations. Council would need to consider the impact of flood affectation of the main roads serving the commercial centre. Development should not place additional burden on emergency services if persons are to drive through flood water when entering or leaving the commercial area. The serviceability of the roads and any required culvert upgrades should be considered during development approval. The impact of any proposed road upgrades must consider impact on flooding upstream and downstream of works.

Response is no flood study was required or submitted by the Proponent. The Proponent submitted a Preliminary Flooding and Stormwater Review in support of the planning proposal demonstrating stormwater management and water quality are able to be addressed, suitable for the planning proposal to proceed.

Aboriginal cultural heritage

OEH has reviewed the Aboriginal cultural heritage information contained in Section 4 and Appendix 3 of RPS 2017 *Additional Supporting Information*. OEH note the following in regard to the Aboriginal cultural heritage assessment:

RPS 2017 (Appendix 3:1) state that: *RPS has been engaged by Port Stephens Council (PSC) to provide an Aboriginal Heritage Due Diligence Letter Report to inform a planning proposal at 795 Medowie Road, Medowie.*

RPS additionally note:

...this report has been undertaken in accordance with the guiding principles of the Due Diligence Code of Practice for the protection of Aboriginal Objects in New South Wales (2010) ("Due Diligence Code").

OEH note that any Aboriginal cultural heritage assessment intended to inform a planning proposal should meet the requirements of both the *National Parks and Wildlife Act 1974* (NPW Act) and the *Environmental Planning and Assessment Act 1979* (EP&A Act). Aboriginal cultural obligations under Part 6 of the NPW Act refer specifically to the conservation and protection of Aboriginal

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objects and declared Aboriginal places. Aboriginal cultural heritage obligations under Section 117 (Direction 2.3) of the EP & A Act require an assessment of Indigenous heritage significance, which in-turn requires a broad focus that must incorporate an assessment of social value. OEH therefore advise that undertaking due diligence (in accordance with DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*) is not an appropriate assessment mechanism to assess social values associated with land and/or the significance of objects or places.

OEH additionally note that a 'post-rezoning' assessment of Indigenous cultural heritage values associated with this area may cause significance delays in the development approval process, and may present significant planning constraints for future development. To help identify these constraints, OEH has developed specific advice on how best planning authorities can meet the obligation to conserve indigenous (Aboriginal) heritage in accordance with Section 117 of the EP & A Act.

Response is that the site is currently zoned R2 Low Density Residential. Earthworks, in preparation for future development, have already taken place in accordance with appropriate approvals (including the extension of Peppertree Road, construction of Muir Street, and drainage works). The due diligence report did not identify any Aboriginal heritage sites or places, and concluded there is no identified risk of harm, and that an Aboriginal Heritage Impact Permit is not required.

Worimi Local Aboriginal Land Council (WLALC)

The planning proposal was referred to the WLALC. No response was received.

PART 4 - MAPPING

The subject land is identified at **ATTACHMENT 1**.

The following mapping amendments are proposed and attached with this Planning Proposal:

- Amending the *Port Stephens Local Environmental Plan 2013* Land Zoning Map (LZN_004B) in accordance with the Draft Land Zoning Map at **ATTACHMENT 2**.
- Amending the *Port Stephens Local Environmental Plan 2013* Lot Size Map (LSZ_004B) in accordance with the Draft Lot Size Map at **ATTACHMENT 3**.
- Amending the *Port Stephens Local Environmental Plan 2013* Height of Building Map (HOB_004B) in accordance with the Draft Height of Buildings Map at **ATTACHMENT 4**.

PART 5 – DETAILS OF COMMUNITY CONSULTATION

The planning proposal was placed on public exhibition from 8 June to 22 June 2017.

Exhibition material was made available for inspection during the public exhibition period from Council's website and at Council's Administration Building in Raymond Terrace. A copy was also placed at the Medowie Community Centre.

Council received 2 submissions. The key issues are:

1. Request for inclusion of adjoining land at the intersection of Medowie Road and Muir Street;
2. Concern for the potential effect on supply and demand for commercial land and retailing; and
3. Demand for new public toilets in the town centre.

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The inclusion of additional land at the intersection of Medowie Road and Muir Street may have strategic planning merit. Its consideration would be subject to consideration of a separate planning proposal.

Concern about the potential effect on supply and demand for commercial land is addressed previously. Land south of Muir Street is also directly identified in the Strategy for rezoning. Rezoning the subject land satisfies demand for the low growth scenario to the year 2035.

There is no requirement for the provision of public toilets with the planning proposal. The Strategy identifies two potential locations for their provision; near the subject land or further to the west (near the Medowie Shopping Village). The *Port Stephens Strategic Asset Management Plan 2017-2027* lists investigating location and design for new toilet facilities in the commercial area as a long-term-future action.

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PART 6 – PROJECT TIMELINE

The following has already occurred:

- Council resolved to prepare the planning proposal July 2016.
- Gateway determination issued August 2016.
- Updated & additional technical information submitted by proponent March 2017.

The following timeline is proposed to complete the planning proposal:

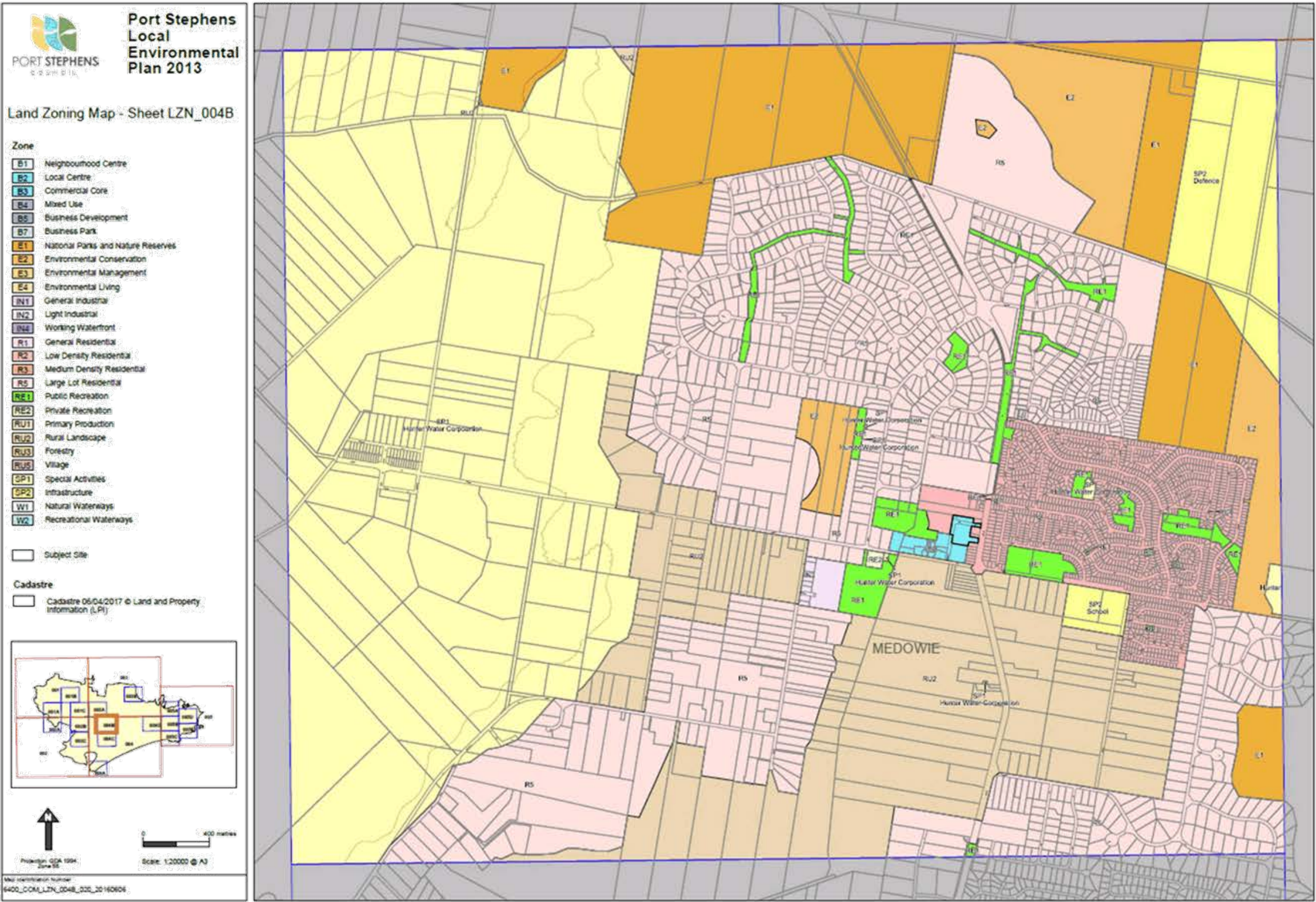
Table 6 Proposed Timeline

<i>Item</i>	June 2017	Jul 2017	Aug 2017	Sept 2017	Oct 2017	Nov 2017	Dec 2017	Jan 2018
<i>Agency consultation & public exhibition (8th June to 22nd June)</i>								
<i>Review submissions and agency referrals</i>								
<i>Council 'caretaker' period</i>								
<i>Post-exhibition Council report</i>								
<i>Anticipated time Council will forward the Plan to the Department of Planning and Environment including time to be made and notified</i>								

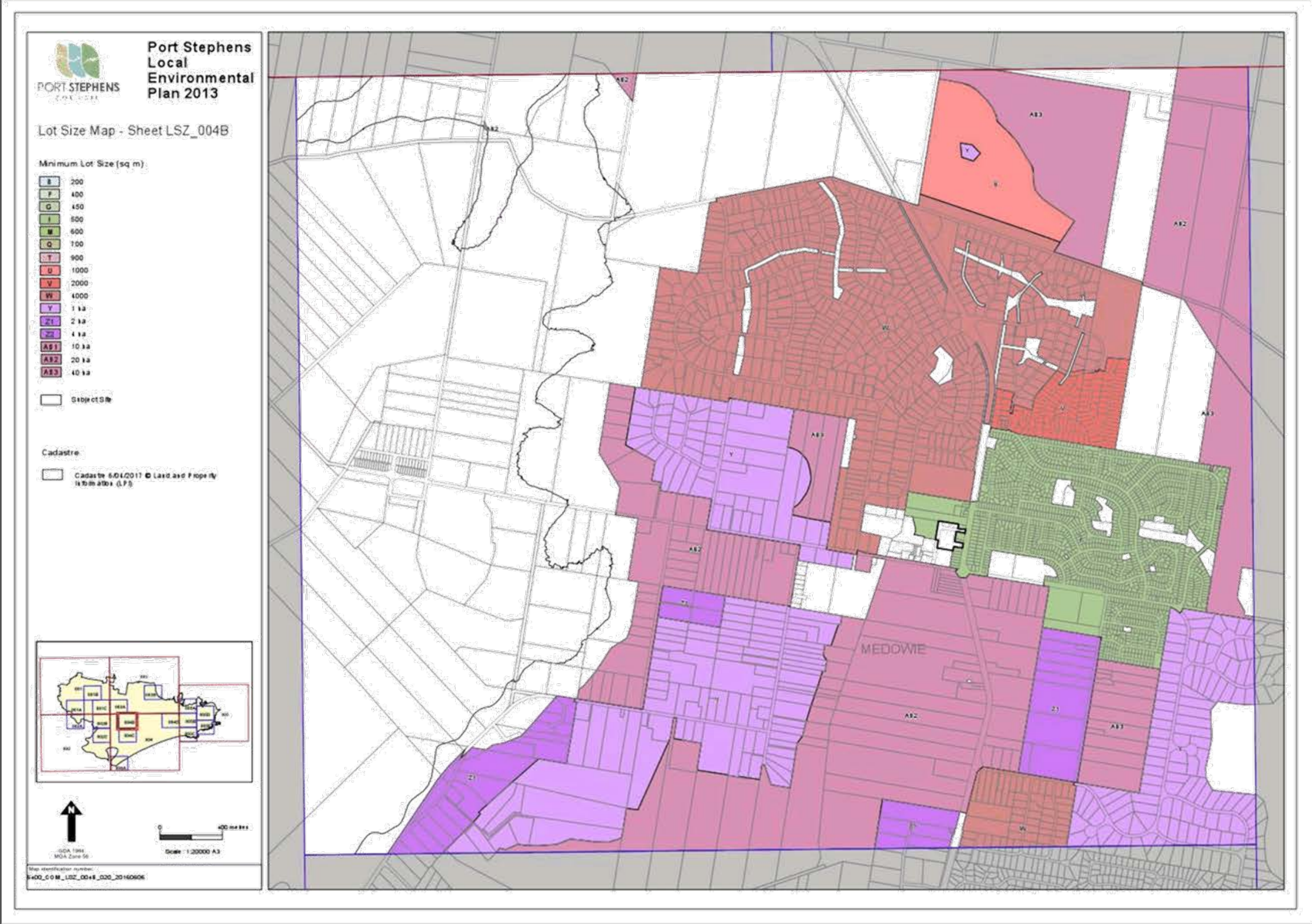
ATTACHMENT 1 - SITE IDENTIFICATION MAP



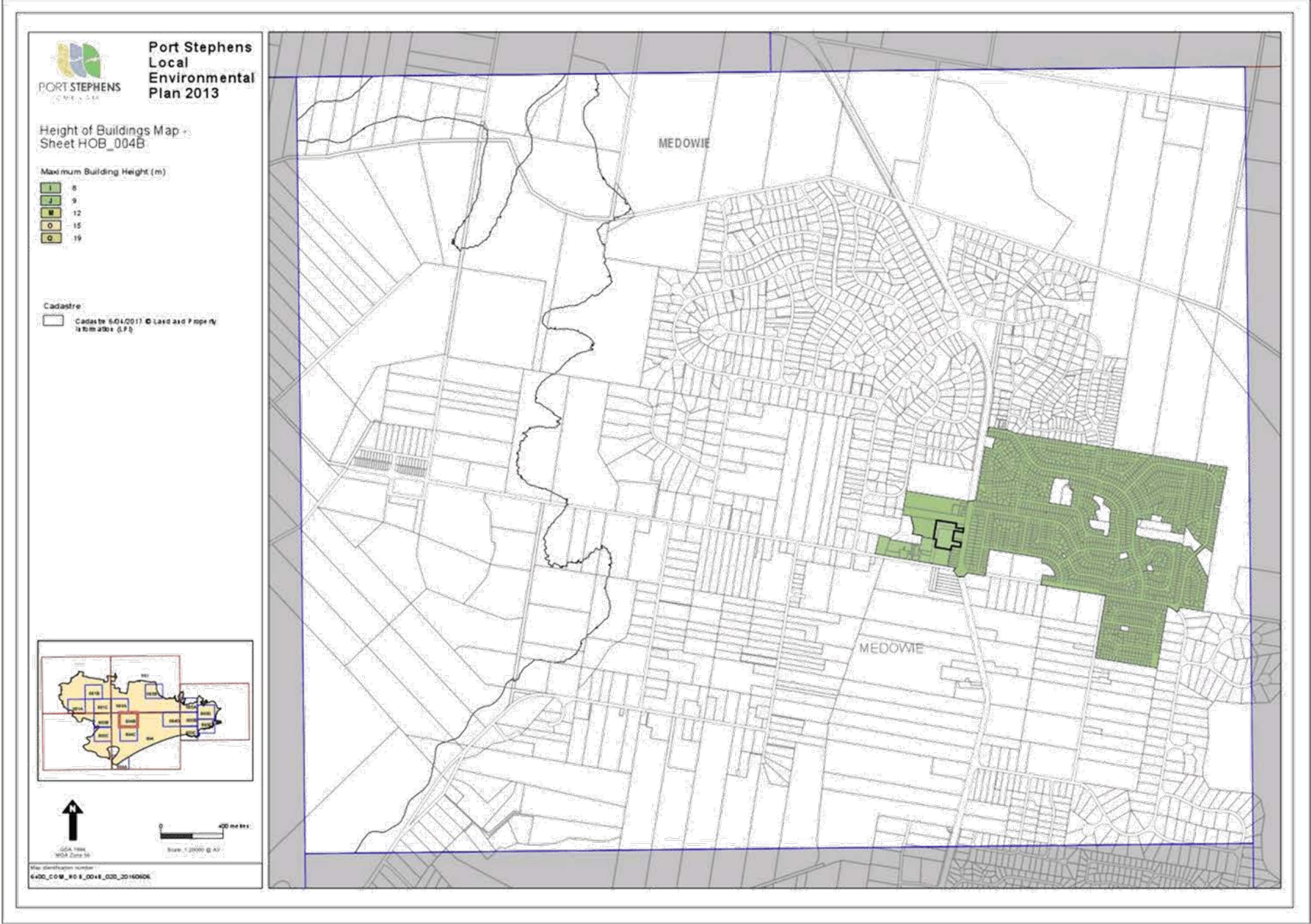
ATTACHMENT 2 - DRAFT LAND ZONING MAP (PROPOSED ZONING B2 LOCAL CENTRE)



ATTACHMENT 3 - DRAFT LOT SIZE MAP



ATTACHMENT 4 - DRAFT HEIGHT OF BUILDINGS MAP (PROPOSED MAXIMUM BUILDING HEIGHT "I" 9M)



Port Stephens Local Environmental Plan 2013

Existing Land Zoning Map

Cadastral

17/05/2017 © Land and Property Information (LPI)

Subject Site

Zone

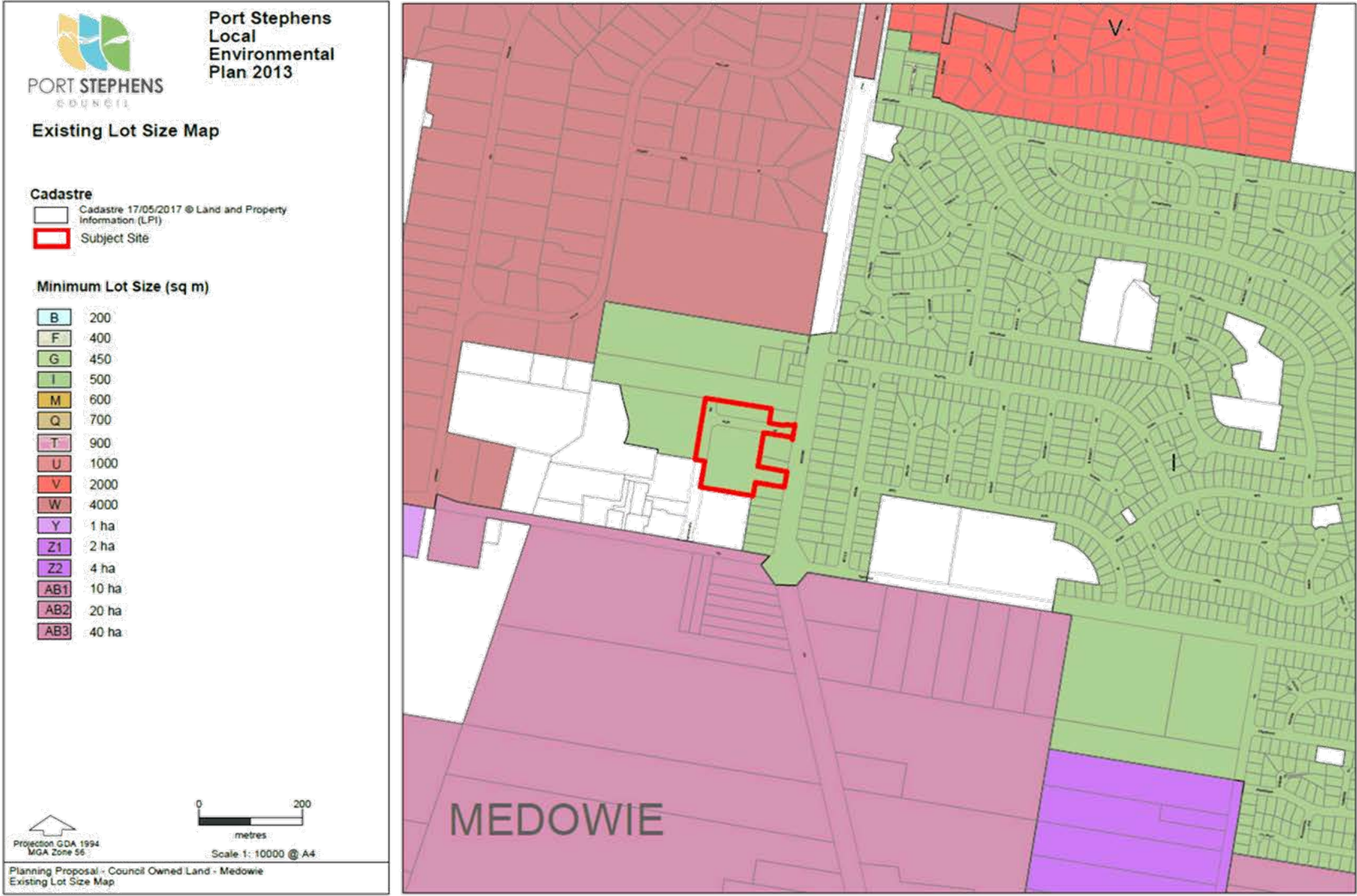
B1 Neighbourhood Centre
 B2 Local Centre
 B3 Commercial Core
 B4 Mixed Use
 B5 Business Development
 B7 Business Park
 E1 National Parks and Nature Reserves
 E2 Environmental Conservation
 E3 Environmental Management
 E4 Environmental Living
 IN1 General Industrial
 IN2 Light Industrial
 IN4 Working Waterfront
 R1 General Residential
 R2 Low Density Residential
 R3 Medium Density Residential
 R5 Large Lot Residential
 RE1 Public Recreation
 RE2 Private Recreation
 RU1 Primary Production
 RU2 Rural Landscape
 RU3 Forestry
 RU5 Village
 SP1 Special Activities
 SP2 Infrastructure
 W1 Natural Waterways
 W2 Recreational Waterways

0 200 metres
 Scale 1:10000 @ A4

Projection GDA 1994
 MGA Zone 56

Planning Proposal - Council Owned Land - Medowie
 Existing Land Zoning Map

ATTACHMENT 6 - EXISTING LOT SIZE MAP (EXISTING MINIMUM LOT SIZE "I" 500)



ATTACHMENT 7 - EXISTING HEIGHT OF BUILDINGS MAP (EXISTING MAXIMUM "J" 9M)



MINUTES ORDINARY COUNCIL - 12 DECEMBER 2017**ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.****SUBMISSION SUMMARY TABLE – PLANNING PROPOSAL FOR PART OF LOT 1 DP 1215257 (795 MEDOWIE ROAD)**

#	Summary	Planning Proposal Response
Submissions from the Public		
1.	<p>Received notification that there is a planning proposal for the Council owned land in the Medowie town centre. The planning proposal is to rezone the Council held land from R2 Low Density residential to B2 Local Centre.</p> <p>Our property shares boundaries with the Council's land and is within the area marked out in the Medowie Town Centre Master Plan for Mixed Use Commercial.</p> <p>We would like our property to be included in the rezoning that is planned for the Medowie Local Centre and would request to be kept informed when the next planning meeting will be, so that we can attend.</p>	<p>Noted.</p> <p>Noted. The land being referred to is at the corner of Muir Street and Medowie Road.</p> <p>The inclusion of this additional land may have planning merit, it does not form part of the planning proposal under consideration. Land between Muir Street and Ferodale Road is identified in the Strategy, subject to the submission and assessment of a separate proposal.</p>
2.	<p>Comments on behalf of the existing commercial entities of the Medowie Commercial Centre, Medowie Investments Pty Ltd, Medowie Property Pty Ltd, Colonial Real Estate Pty Ltd & as a representative of the owners of Medowie Developments Pty Ltd 47A Ferodale Road & J R Nordheim PF Pty Ltd 797 Medowie Road.</p> <p>Council's proposal has merit but specific action should also be taken to rezone commercial the land fronting Medowie Road from the corner of Ferodale Road (47A) up to & including 797 Medowie Road which fronts on to Medowie Road & Muir street & adjoins councils own land</p>	<p>Noted.</p> <p>There may be merit for inclusion of other adjacent land on the northern side of Muir Street subject to consideration of a planning proposal.</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>(subject to this proposal) on the northern side of Muir St.</p> <p>The strategy rightly encourages a commercial type of use for these lots which should in time help create some sort of uniform development.</p> <p>However the rezoning in question more than doubles the existing commercial space so when considering that Medowie is about two thirds developed with the existing commercial traders struggling & neither of the big supermarkets making anywhere near budget how much more commercial space do we need even allowing for a 50% to 60% increase in the present population.</p> <p>A discount department store of any real size is unlikely (but a smaller one likely e.g. Country Target or something similar) & you would hope the likes of bulky goods type traders might fill some of the void. It is also likely more retail will be provided but must question how much more is viable. In any case with the subject land being rezoned there will more than ample commercial space being provided for now & in the future</p> <p>The benefit of the land to the north of Muir Street being zoned commercial has to be questioned. With high to medium density residential development adjoining it could be better served to act as a buffer for adjoining development & be included as residential rather than commercial.</p>	<p>The planning proposal will create greater merit for the inclusion of other adjoining land on the northern side of Muir Street. This will likely lead to a uniform type of commercial development along Muir Street.</p> <p>Land south of Muir Street is directly identified in the Strategy for rezoning. To further reduce risk Council may resolve to exclude the small strip of land north of Muir Street. The planning proposal is estimated to provide enough retail floorspace in Medowie to satisfy total future supportable retail floorspace of 14,800m² in the year 2035 under a 'low growth' scenario.</p> <p>The planning proposal will rezone the land to make the range of uses under the zone B2 Local Centre permissible with development consent. This could potentially include a discount department store or bulky goods retailer. The particular type of retailer and the design of a development is not part of this planning proposal assessment.</p> <p>The small strip of land north of Muir St is included in the planning proposal in recognition that the strategy is a guide to potential future land use and the flexibility of the B2 Local Centre Zone. It will support development that is for smaller businesses because of its small area and lot depth (in comparison to the large area south of Muir St).</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>There has been a concept plan lodged for 797 Medowie Road for Seniors Living adjoining this land. Properly staged this concept would flow through that particular area of Muir Street North. This plan was lodged with PSC Planning council on 8th June who is assessing the proposal & is well worth considering in the big picture. Such a development & use of this land is badly needed & would be widely applauded by the local community in particular senior residents who are screaming out for this type of housing.</p> <p>As a priority provision has to be made for a toilet & amenities block with rest rooms including change rooms for babies & ideally located next to Woolworths loading bay incorporating some sort of mini park area providing seating shade etc. This could be designed in such a way to add character & charm to the commercial centre rather than a concrete block & would not need to be a huge area.</p> <p>The needs of the community can't be ignored it is councils responsibility to develop this land with particular needs of the community rather than what would better benefit the council financially.</p>	<p>The proposed concept is acknowledged. Seniors housing is permitted (with development consent) at 797 Medowie Road under the existing R2 Low Density Residential Zone.</p> <p>There is no requirement for the provision of public toilets with the planning proposal. The Strategy identifies two potential locations for their provision, near the subject land or further to the west (near the Medowie Shopping Village). The <i>Port Stephens Strategic Asset Management Plan 2017-2027</i> lists investigating location and design for new toilet facilities in the commercial area as a long-term-future action. It should be acknowledged that additional commercial development will increase demand.</p> <p>The Council is to consider whether to proceed with the planning proposal.</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
Submissions from External Agencies		
Hunter Water Corporation	<u>Water supply</u> The proposed rezoning is located in the Port Stephens Water Supply System, which is supplied from the Williamtown 1A Reservoir. There is sufficient current capacity for the estimated demand from the proposed rezoning area.	Noted.
	<u>Wastewater Transportation</u> The proposed rezoning is located in the Medowie 10 Wastewater Pumping Station (WWPS) catchment area, which is within the Raymond Terrace Wastewater Treatment Works (WWTW) catchment. Future upgrades to this station will be undertaken in the near term to ensure sufficient capacity is available to meet growth in the Medowie catchment as it occurs.	Noted.
	<u>Wastewater treatment</u> There is sufficient capacity at the Raymond Terrace WWTW. Water and sewer systems are dynamic by nature and, as such, capacity availability and system performance varies over time. As a consequence, the advice is indicative only. A detailed analysis of available capacity will be undertaken upon lodgement of a Notice of Formal Requirements.	Noted.

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p><u>Water Resources</u></p> <p>HWC requires all development within drinking water catchments to demonstrate Neutral or beneficial Effect on water quality (NORBE). Water quality is affected by erosion and sediment control practices during the construction stage and by wastewater (sewage) and stormwater management measures during operational stages. A development is considered to demonstrate NORBE if the development:</p> <ul style="list-style-type: none"> i. Has no identifiable potential impact on water quality. ii. Will contain any water quality impact on the development site and prevent it from reaching any watercourse, waterbody or drainage depression on the site, or iii. Will transfer any water quality impact outside the site where it is treated and disposed of to standards approved by the consent authority. <p>All future development at the site will be expected to implement appropriate erosion and sediment control measures and connect to the reticulated sewer network.</p> <p>As outlined in the <i>Preliminary Flooding and Stormwater Review</i> (GCA Engineering Solutions, 2017) prepared in support of the planning proposal, stormwater runoff from the site is expected to meet NORBE provided that</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. See following response.</p> <p>The information provided by the proponent provides conceptual information appropriate for rezoning stage to demonstrate that future development could meet NORBE requirements subject to development design and</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>treatment trains are appropriately selected, designed and maintained.</p> <p>Hunter Water anticipates that future development at the site will be referred under section 51 of the Hunter Water Act 1991, at which time assessment of specific erosion and sediment control and stormwater management measures would be undertaken.</p> <p>HWC has no objection to the rezoning proposal, but further liaison with HWC should take place to ensure that the site is effectively serviced.</p>	<p>management.</p> <p>Section 51 of the <i>Hunter Water Act 1991</i> (NSW) may require future development on the land to be forwarded to HWC. A future development will need to comply with any requirements.</p> <p>It is recommended to proceed with the planning proposal. The proponent or future developer is recommended to liaise with HWC for any development requirements.</p>
Office of Environment & Heritage	<p><u>Biodiversity</u></p> <p>As the rezoning will not seek to reduce the amount of environmental protection for the site section 117 Direction 2.1 is not triggered. However, Council has asked OEH to comment on SEPP 44 (koala habitat protection) matters, as the development is likely to impact on two Swamp Mahogany Eucalyptus robusta trees, which are known koala feed trees, and will affect area classified as preferred 100m buffer over marginal habitat or link over cleared land. Koalas are recorded in the immediate vicinity and surrounding the site (e.g. on the western side of Peppertree Road). OEH supports the recommendations in the planning proposal including to either avoid the removal of the trees or to mitigate the loss of koala habitat with supplementary planting in the area.</p>	<p>The subject land is already zoned R2 Low Density Residential. It is cleared of native vegetation with the exception of two koala feed trees located at the northern end of Peppertree Road. Future development should try to avoid their removal or provide compensatory planting.</p>

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#	Summary	Planning Proposal Response
	<p><u>Floodplain management</u></p> <p>The Medowie Flood Plain Risk Management Study and Plan (FRMS&P) prepared on behalf of Council by WMA Water was completed in 2016. This study covers the area proposed to be rezoned and therefore no site specific flood study is required.</p> <p>The proposal will result in intensification of use. The portion of the site to be rezoned is located outside of the current flood planning area and is therefore considered appropriate subject to future development approval and controls.</p> <p>The downstream infrastructure is of limited capacity and the FRMS&P has recommended that on-site detention be provided in conjunction with future development in this part of the catchment.</p> <p>The supporting information report prepared by RPS group dated 20 March 2017 provides information regarding provision of onsite detention and water quality controls for proposed development on the site. This is generally consistent with the FRMS&P recommendations. Design should take into account floods of all recurrence intervals and the critical times of concentration of the catchment as recommended in the FRMS&P. In addition the runoff from the site drains to the Campvale Drain. This drain in turn drains into the Campvale Drain Inundation Area (CDIA), which is subsequently pumped to Grahamstown Dam The</p>	<p>No flood study was required or submitted by the Proponent. The Proponent submitted a Preliminary Flooding and Stormwater Review in support of the planning proposal demonstrating stormwater management and water quality are able to be addressed, suitable for the planning proposal to proceed.</p> <p>The planning proposal and supporting information demonstrates the site is suitable for rezoning. Future development will be subject to detailed development approval and controls.</p> <p>On-site detention of stormwater will be addressed at the development application stage.</p> <p>On-site detention of stormwater will be addressed at the development application stage. Proposed future development should provide for on-site capture and reuse of water as far as practicable to reduce volumes of runoff in accordance with the provisions of the <i>Port Stephens Development Control Plan 2014</i>.</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>catchment is therefore classified as a terminal basin and as such is sensitive to volumes of runoff in addition to flow rates. Proposed future developments should provide for on-site capture and reuse of water as far as practicable to reduce volumes of runoff to the CDIA.</p> <p>Many of the local roads within Medowie have been identified as being cut during flood events. Ferodale Road in the vicinity of this site becomes inundated. The flood study also shows flooding in two locations on Medowie Road near the site. It is unclear from the FRMS&P if the road is cut in these locations. Council would need to consider the impact of flood affectation of the main roads serving the commercial centre. Development should not place additional burden on emergency services if persons are to drive through flood water when entering or leaving the commercial area. The serviceability of the roads and any required culvert upgrades should be considered during development approval. The impact of any proposed road upgrades must consider impact on flooding upstream and downstream of works.</p> <p><u>Aboriginal cultural heritage</u></p> <p>OEH has reviewed the Aboriginal cultural heritage information contained in Section 4 and Appendix 3 of RPS 2017 <i>Additional Supporting Information</i>. OEH note the following in regard to the Aboriginal cultural heritage assessment:</p>	<p>Review of the Medowie FRMS&P Figure 3 <i>Flood Emergency Response Planning Classifications – All Design Events</i> shows that overland escape routes are available. The subject land is also elevated and is not flood prone and in the existing developed town centre.</p> <p>In any case, the proposed rezoning for commercial land use should be considered in the context of the existing R2 Low Density Residential zone that applies to the site.</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>RPS 2017 (Appendix 3:1) state that: <i>RPS has been engaged by Port Stephens Council (PSC) to provide an Aboriginal Heritage Due Diligence Letter Report to inform a planning proposal at 795 Medowie Road, Medowie.</i></p> <p>RPS additionally note:</p> <p><i>...this report has been undertaken in accordance with the guiding principles of the Due Diligence Code of Practice for the protection of Aboriginal Objects in New South Wales (2010) ("Due Diligence Code").</i></p> <p>OEH note that any Aboriginal cultural heritage assessment intended to inform a planning proposal should meet the requirements of both the <i>National Parks and Wildlife Act 1974</i> (NPW Act) and the EP&A Act. Aboriginal cultural obligations under Part 6 of the NPW Act refer specifically to the conservation and protection of Aboriginal objects and declared Aboriginal places. Aboriginal cultural heritage obligations under Section 117 (Direction 2.3) of the EP&A Act require an assessment of Indigenous heritage significance, which in-turn requires a broad focus that must incorporate an assessment of social value. OEH therefore advise that undertaking due diligence (in accordance with DECCW 2010 <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</i>) is not an appropriate assessment mechanism to assess social values associated with land and/or the significance of objects or places.</p>	<p>It is recommended that Council proceed with the planning proposal. The site is currently zoned R2 Low Density Residential. Earthworks, in preparation for future development, have already taken place in accordance with appropriate approvals (including the extension of Peppertree Road, construction of Muir Street, and drainage works). The due diligence report did not identify any Aboriginal heritage sites or places, and concluded there is no identified risk of harm, and that an Aboriginal Heritage Impact Permit is not required. No comment was received from the Worimi Local Aboriginal Land Council.</p>

ITEM 4 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

#	Summary	Planning Proposal Response
	<p>OEH additionally note that a 'post-rezoning' assessment of Indigenous cultural heritage values associated with this area may cause significance delays in the development approval process, and may present significant planning constraints for future development. To help identify these constraints, OEH has developed specific advice on how best planning authorities can meet the obligation to conserve indigenous (Aboriginal) heritage in accordance with Section 117 of the EP&A Act.</p>	<p>Refer to above response. Additionally, there are also protections and requirements under legislation at the development application stage. These include the provisions of the <i>Environmental Planning and Assessment Act 1979</i> (NSW); the <i>National Parks and Wildlife Service Act 1974</i> (NSW); and the heritage provisions of clause 5.10 <i>Heritage conservation</i> of the <i>Port Stephens Local Environmental Plan 2013</i>.</p>
Roads & Maritime Services (RMS)	<p>No submission received.</p>	<p>The planning proposal including the traffic assessment submitted by the Proponent was referred to the RMS for comment. No submission was received in response.</p> <p>RMS requested the modelling data for the traffic assessment. The proponent confirmed, and Council advised RMS, that the proponent relied on the data and findings in the broader <i>Medowie Traffic and Transport Study</i> previously completed for Council in late 2012, and the modelling data is not available. No further response or comment was received from RMS.</p>

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#	Summary	Planning Proposal Response
NSW Rural Fire Service (RFS)	<p>The RFS reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 117(2) of the EP & A Act. Based upon an assessment of the information provided, the RFS raised no objections to the proposal subject to a requirement that the future development of the land complies with PFBP 2006. This includes, but is not limited to:</p> <ul style="list-style-type: none">i. Provision of APZs within the proposed lots in accordance with Table A2.4 for residential development or A2.6 for special fire protection purpose developments;ii. Access provided in accordance with the relevant design specifications; andiii. Services to be provided in accordance with section 4.1.3.	<p>Future development on the subject land will be required to meet the requirements of planning for bushfire protection.</p>

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Attn: Matthew Borsato

Port Stephens Council

PO Box 42

RAYMOND TERRACE NSW 2324

Dear Matthew

**RE: RESPONSE TO ISSUES RAISED DURING EXHIBITION OF THE PLANNING PROPOSAL FOR
795 MEDOWIE ROAD, MEDOWIE, PART OF LOT 1 DP 1215257**

RPS acts on behalf of Port Stephens Council (Property Services) in preparing this response letter in relation to matters raised by NSW Office of Environment and Heritage (OEH) pertaining to Aboriginal cultural heritage and in relation to a matter raised by a public submission. Responses to the issues raised are provided below.

Aboriginal cultural heritage

OEH indicate in their letter (DOC 17/3349846-1) that Aboriginal cultural heritage obligations under Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act) refer specifically to the conservation and protection of Aboriginal objects and declared Aboriginal Places. Aboriginal cultural heritage obligations under Section 117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) require an assessment of Indigenous heritage significance, which in-turn requires a broad focus that must incorporate an assessment of social value. OEH therefore advise that undertaking due diligence (in accordance with the DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*) is not an appropriate assessment mechanism to assess social values associated with land and / or the significance of objects or place.

Response

It should be noted that the site is currently zoned R2 Low Density Residential under *Port Stephens Local Environmental Plan 2013* (PS LEP 2013) and earthworks in preparation for future development, in accordance with appropriate approvals, have taken place and the site is therefore cleared.

It is agreed that if the current R2 Low Density Residential zoning wasn't in place, along with the preliminary earth works and clearing that have occurred, then the approach suggested by OEH, that is one that includes a broad focus on social values, would be appropriate and would have taken place.

The due diligence approach used for the Planning Proposal is considered to be appropriate in this instance as development applications for uses under the R2 Low Density Residential could conceivably occur at the moment. In addition the Due Diligence Report conducted did not identify any Aboriginal heritage sites or places on site. The Due Diligence Report concluded that as there are no Aboriginal objects or places in the area, there is no identified risk of harm and an Aboriginal Heritage Impact Permit is not required for the proposed activity. The Due Diligence Report provided a number of appropriate "precautionary" recommendations for future development works.

For these reasons it is considered that due diligence assessment process taken was appropriate and no further work under the requirements of the NPW Act is required.

Australia Asia Pacific | United Kingdom | Ireland | Netherlands | Norway | USA | Canada | Russia | Brazil | Africa | Middle East

RPS Australia East Pty Ltd ABN 44 140 292 762. A member of the RPS Group Plc

**Public submission - Benefit of rezoning land north of Muir Street from Low Density Residential to B2 is questioned**

It is noted that only two submissions to exhibition of the Planning Proposal were received by Council. Submission 1 suggested inclusion of additional land and did not object to the Planning Proposal. Submission 2 also did not object to the Planning Proposal however did make the following comment:

"The benefit of the land to the north of Muir Street being zoned commercial has to be questioned. With high to medium density residential development adjoining it could be better served to act as a buffer for adjoining development & be included as residential rather than commercial."

Response

It is considered that the rezoning of this area of land, as documented / illustrated in the exhibited Planning Proposal, is appropriate and amendment as suggested by the submission is not considered necessary or appropriate. Reasons for this position are as follows:

- **Greater Flexibility** - The Planning Proposal will provide greater flexibility and enable development (buildings and subdivision), subject to later development consent, for a range of local centre purposes including residential uses as permitted under the current R2 Low Density Residential zone. Under the provisions of PS LEP 2013 local centre uses such as commercial premises are not permitted within the R2 Low Density Residential zone.
- **Improved compatibility between different uses** – Conventional land use zoning schemes have often shown segregated land use zones changing at the street centre line. Boundary location at the street centre line, as would be required if the Planning Proposal was amended to reflect the submission, often introduces compatibility problems in terms of real estate values and streetscape amenity when different uses front each other. The Planning Proposal correctly identifies the zone boundary along the back of the northern section of Lot 1 DP 1215257. Future land use compatibility is much more important for frontage of lots along streets, than for their rears. Uses change more easily when they meet at the rear of the lots. The figure on the following page illustrates this situation.

It is therefore considered that land north of Muir Street should be zoned B2 Local Centre, as exhibited within the Planning Proposal, as it provides greater flexibility for the expansion of the Medowie Town Centre and will improve land use compatibility between uses on both sides of Muir Street.

Conclusion

The above information demonstrates that no further work under the requirements of the NPW Act is required and the location of the zoning boundary between land zoned B2 Local Centre and R2 Low Density Residential is located appropriately.

We trust this information is sufficient for your purposes, however should you require further details or clarification, please do not hesitate to contact the writer by telephone.

Yours sincerely

RPS

Rob Dwyer

Planning Manager - Newcastle

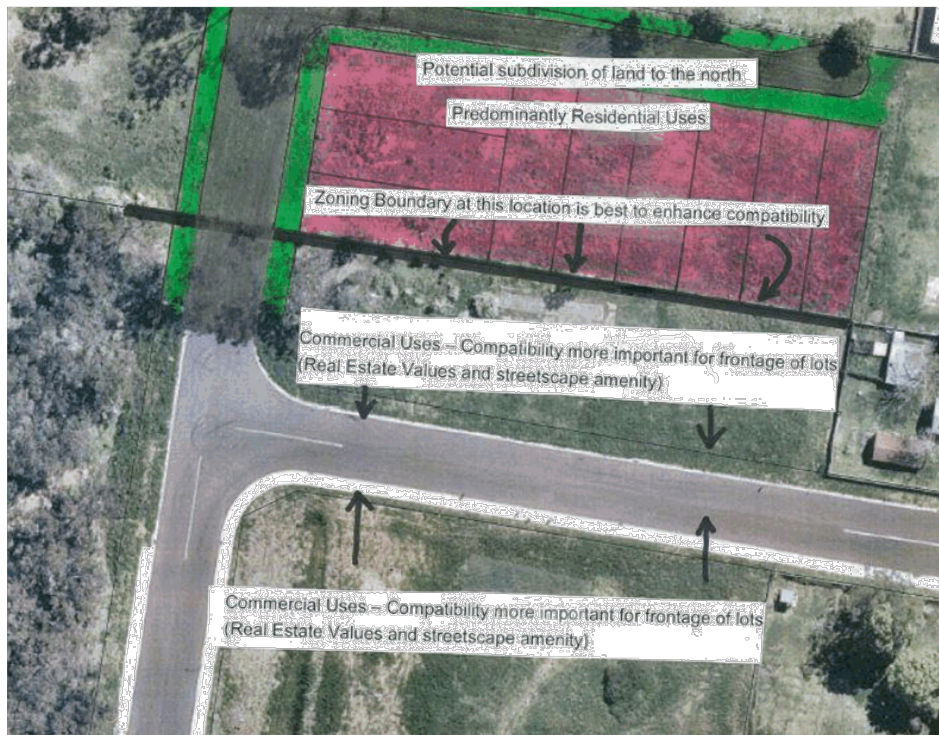


Figure demonstrating zone boundary and importance of same uses fronting each other.