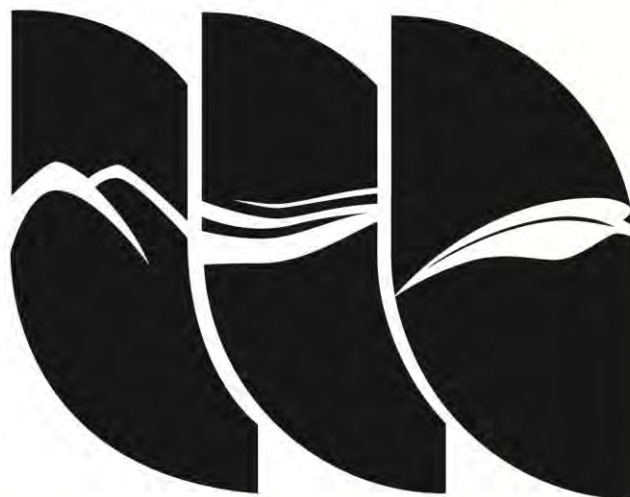


ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
27 OCTOBER 2015



PORT STEPHENS
C O U N C I L

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**ITEM 1 - ATTACHMENT 1 PLANNING PROPOSAL - 8 WAROPARA ROAD
MEDOWIE.****FILE NUMBERS**

Council: PSC2006-1515
Department: PP_2013_PORTS_005_00

SUMMARY

Subject land: 8 Waropara Road Medowie (Lot 10 DP 1051742)

Proponent: Carman Surveyors Pty Ltd (on behalf of the landowner)

Proposed changes: Amend minimum lot size from 1 hectare 10,000m² (1 hectare) to 1,000m² (0.1 hectares) for approximately 2.3 hectares of the site fronting Waropara Road

Area of land: 6.1 hectares total subject land area

Lot yield: 15 to 20 lots (approximate)

This Planning Proposal describes proposed amendments to the *Port Stephens Local Environmental Plan 2013* to change minimum lot size provisions applying part of the subject land fronting Waropara Road. It affects an area of approximately 2.3 hectares out of a total subject land area of approximately 6.1 hectares.

The subject land is vegetated with two broad assemblages: Coastal Plains Smooth-barked Apple (predominantly located in the elevated western parts of the site fronting Waropara Road and subject to lot size change under the Planning Proposal) and Coastal Plains Smooth-barked Apple-Melaleuca Woodland (an Endangered Ecological Community predominantly in the lower-lying eastern parts of the site and not subject to lot size change under the Planning Proposal).

The area surrounding the subject land is rural residential in character, however planning strategies identify the land as a location for urban growth. It is also located immediately adjacent to a school.

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PART 1 – Objective of the proposed Local Environmental Plan

The objective of this Planning Proposal is to amend minimum lot size provisions applying to part of the subject land from 1 hectare (10,000m²) to 0.1 hectares (1,000m²) under the *Port Stephens Local Environmental Plan 2013*. The purpose is to facilitate its future subdivision for residential development (with development consent) in general accordance with the adopted *Medowie Strategy*.

The proposed changes apply only to approximately 2.3 hectares of land within the site fronting Waropara Road. The existing R5 Large Lot Residential zoning will be retained across the site. The existing minimum lot size of 1 hectare will also be retained on the lower-lying eastern part of the site.

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

The objective of the Planning Proposal will be achieved by:

- Amending the *Port Stephens Local Environmental Plan 2013* Minimum Lot Size Map in accordance with the proposed Draft Lot Size Map at **Attachment 1**.
- Amending the *Port Stephens Local Environmental Plan 2013* Urban Release Area Map in accordance with the proposed Draft Urban Release Area Map at **Attachment 2**.

The Planning Proposal will retain the existing R5 Large Lot Residential Zone.

The lower-lying eastern part of the site, which is generally identified as flood prone, will retain the existing 1 hectare minimum lot size provisions.

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 has been prepared in response to the *Medowie Strategy* which identifies part of the site for residential development.

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 can only be achieved by amending the *Port Stephens Local Environmental Plan 2013* Minimum Lot Size Map. The current minimum lot size applying across the entire site is 1 hectare. To implement the Planning Proposal, amendment of the Minimum Lot Size Map to 1,000m² applying to part of the site is required.

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SECTION B – Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Planning Proposal is consistent with the *Lower Hunter Regional Strategy* which identifies Medowie as a proposed urban area with Boundaries to be defined through local planning (the *Medowie Strategy*).

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

Port Stephens Community Strategic Plan

The Planning Proposal is consistent with the *Port Stephens Community Strategic Plan* Objective 11.1 "Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations" by seeking to rezone land in accordance with adopted land use planning strategies for the area.

Port Stephens Planning Strategy

The Planning Proposal is consistent with the *Port Stephens Planning Strategy* which identifies the site for potential future residential development.

Medowie Strategy

The Planning Proposal is generally consistent with the *Medowie Strategy* which identifies part the site adjoining Waropara Road for residential development including 'standard residential' (lots with an area of 500m² – 600m²) and 'Environmental Living'/'Rural Small Holdings' (lots with an area of 1,000m² – 1,500m²). The Planning Proposal seeks to average the lot sizes of those identified in the *Medowie Strategy* to 1,000m² given the surrounding large lot development and the constraints of the site.

The site is located within the 'Waropara Neighbourhood' with future development aimed at complementing two nearby schools, including one immediately adjacent. Land surrounding the subject site is generally large lot residential development, with lot sizes of approximately 8,000m².

The following figures show the site in relation to the *Medowie Strategy*.

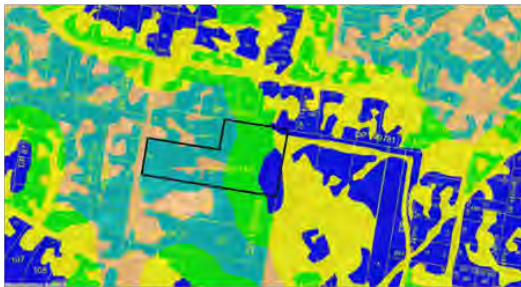
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6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

An assessment of the Planning Proposal against the relevant State Environmental Planning Policies is provided in the following table:

Table 1 Relevant State Environmental Planning Policies

SEPP	Consistency and Implications
SEPP 44 – Koala Habitat Protection	<p>The <i>Port Stephens Comprehensive Koala Plan of Management</i> (CKPOM) is applied in Port Stephens LGA for the purposes of implementing SEPP 44. Aspects of the Planning Proposal are inconsistent with the CKPOM however are adequately justified for reasons set out below.</p> <p>The Council GIS Koala Habitat Planning Map below indicates the site contains areas of Preferred Koala Habitat (shown blue), Preferred Buffer Over Marginal Habitat (shown green) and Preferred Link Over Marginal Habitat (shown light blue/aqua).</p>  <p>The proposed change to the minimum lot size applies to the elevated part of the site fronting Waropara Road and that is approximately 2.3 hectares in area. This part of the site is identified as Preferred Link Over Marginal Habitat and will be impacted by the Planning Proposal.</p> <p>The lower-lying eastern parts of the site comprise higher value Koala habitat and are not subject of any change under the Planning Proposal: a minimum lot size of 1 hectare will continue to apply over this part of the site.</p> <p>The Proponent has provided mapping based on site survey. It demonstrates consistency with the Council GIS Koala Habitat Planning Map with the</p>

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	<p>exception of a minor difference in the lower-lying eastern part of the site (refer to <i>Seven Part Test Report</i>, Wildthing Environmental Consultants, March 2014, page 45).</p> <p>The following are performance criteria of the CKPOM for rezoning land:</p> <p><i>a) Not result in development within areas of Preferred Koala Habitat or defined Habitat Buffers.</i></p> <p><i>b) Allow for only low impact development within areas of Supplementary Koala Habitat and Habitat Linking Areas.</i></p> <p><i>c) Minimise the removal of any individuals of preferred koala food trees, wherever they occur on the site.</i></p> <p><i>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.</i></p> <p>Council assessment is that the minimum lot size does not leave much scope for Performance Criteria b) and d) to be met. The Proponent proposes the use of ameliorative measures such as compensatory tree planting, street tree planting, suitable fencing, exclusion of dogs, defined building envelopes etc. as a means to meet the Performance Criteria. Assessment is that this is unacceptable under the CKPOM, but nevertheless is satisfied with the Planning Proposal outcome because the eastern half of the site will afford some protection for koala habitat, and that the proposed ameliorative measures will offset the loss of habitat linking areas, subject to the proposed management measures being implemented at a subsequent stage in the development process.</p> <p>Council assessment is that it is satisfied that a Habitat Management Zone is to be established in the eastern lower-lying part of the site, where the <i>Medowie Strategy</i> identifies the area as a preferred biodiversity offset area to maintain linkages from the north-east to the south-east of the site. This will also improve the existing vegetation community</p>
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	<p>through weed control and re-planting. Council assessment is that these measures must be implemented at subsequent development stages.</p> <p>Council assessment also notes that no koala feed trees have been found in the western part of the site.</p> <p>The conclusion of Council's assessment is summarised as follows:</p> <ul style="list-style-type: none"> • The proposed ameliorative measures for offsetting the loss of CKPOM habitat linking areas must be implemented at the development application stage, and • The Preferred Koala Habitat in the eastern portion of the site is at a minimum to apply a habitat management zone via a positive covenant under the <i>Conveyancing Act 1919</i> (or be zoned E2 Environmental Conservation to achieve the optimum environmental outcome). <p>Furthermore, notwithstanding any potential inconsistency of the Planning Proposal with the performance criteria for rezoning in the CKPOM, the proposed development footprint is consistent with the Medowie Strategy.</p> <p>Any inconsistency with the CKPOM is justified by the proposed management measures to be implemented at subsequent stages in the development process and the identification of the subject land for development in planning strategies for the area.</p>
<p>SEPP 55 – Remediation of Land</p> <p>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.</p>	<p>A <i>Phase 1 Contamination Assessment</i> has been completed (refer to <i>Phase 1 Contamination Assessment</i>, 8 Waropara Road, Medowie EP0073 15 October 2013). The findings are summarised as follows:</p> <ul style="list-style-type: none"> • The only contaminants of potential concern relate to imported fill associated with the construction of a drainage channel at the north eastern corner of the site. • The risk of contamination of the fill is considered to be low but may warrant additional investigation depending on the final use of the material. • Based on the results the site is considered to

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	<p>contain a low risk of significant soil contamination.</p> <p>The area of imported fill referred to in the <i>Phase 1 Contamination Assessment</i> is on the low-lying eastern part of the site and the risk of contamination is identified as low.</p> <p>The Planning Proposal is consistent with this SEPP.</p>
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7. Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of the Planning Proposal against relevant Section 117 Directions issued under the *Environmental Planning and Assessment Act 1979* (NSW) is provided in the following table:

Table 2 Relevant s.117 Directions

Ministerial Direction	Consistency and Implications
1.1 Business and Industrial Zones 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.	This Direction applies because the Planning Proposal may affect land within an existing or proposed business or industrial zone. The Planning Proposal will have a positive impact on the existing town of Medowie and nearby major regional centre of Raymond Terrace by providing additional land for housing in a suitable location. The Planning Proposal is consistent with the <i>Port Stephens Planning Strategy</i> and <i>Medowie Strategy</i> and will support the existing Medowie commercial area. The Planning Proposal is consistent with this Direction.
1.2 Rural Zones The objective of this direction is to protect the agricultural production value of rural land.	This Direction does not strictly apply because the site is zoned R5 Large Lot Residential. In any case, the site is vegetated and is not used for agricultural production. The Planning Proposal is consistent with this Direction.
1.3 Mining, Petroleum Production and Extractive Industries 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.	NSW Trade and Investment – Mineral Resources advises they have no concerns in relation to the Planning Proposal. The Planning Proposal is consistent with this Direction.

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<p>1.5 Rural Lands</p> <p>The objective of this direction is to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes.</p>	<p>This Direction does not strictly apply because the site is zoned R5 Large Lot Residential. In any case, the site is vegetated and is not used for agricultural production.</p> <p>The Planning Proposal is consistent with this Direction.</p>
<p>2.1 Environmental Protection Zones</p> <p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p>	<p>This Direction applies whenever a Relevant Planning Authority (Council) prepares a planning proposal.</p> <p>Under this Direction a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. Alternatively, a planning proposal that applies to land within an environment protection zone or otherwise identified for environmental protection in an LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).</p> <p>A planning proposal may only 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 delegate) that the provisions of the planning proposal that are inconsistent are:</p> <ul style="list-style-type: none"> • Justified by a strategy which: gives consideration to the objectives of this direction; identifies the land which is the subject of the planning proposal; 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 prepared by the Department of Planning which gives consideration to this Direction, or • Is of minor significance.

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	<p>The NSW Office of Environment and Heritage (OEH) relevantly provides the following comment on the consistency of the Planning Proposal with this Direction as follows:</p> <p><i>"The Section 117 Direction 2.1 requires justification for a planning proposal which leads to a reduction in the level of environmental protection. In this case the reduction in environmental protection is caused by an intensification of dwelling density from one dwelling per hectare to one dwelling per 1,000m². The R5 zone in Port Stephens Local Environmental Plan includes the provision "to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality". This planning proposal therefore appears to be inconsistent with the provision.</i></p> <p><i>The justification provided by Council for the planning proposal is the existence of the Medowie Strategy, endorsing development in certain precincts of Medowie. It should be noted that the area is identified on the page 62 as Stage 1 development, but that the map on page 63 does not identify the subject land as belonging to the area in which "vegetation will be removed or modified".</i></p> <p><i>The Medowie Strategy requires that development should minimise the removal of trees, and not fragment Koala linkage areas so that Koala movement is not impeded. It is not clear from the proposal how impacts will be minimised, apart from the mention of the use of subdivision design. It is questionable that this will be possible at the proposed dwelling density. It is therefore recommended that Council seeks clarification of how the proponent aims to avoid, mitigate and offset biodiversity losses."</i></p> <p style="text-align: right;">(OEH, 7 Oct 2014)</p> <p>The Planning Proposal satisfies this Direction. The Planning Proposal will not have any significantly adverse effects on both Preferred Koala Habitat and Swamp Sclerophyll EEC. To achieve this outcome ameliorative measures must be implemented at the development application stage, and a proposed habitat management zone in the eastern portion of the site protected under a positive covenant under the <i>Conveyancing Act</i></p>
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	<p>1919 (NSW).</p> <p>The Planning Proposal is consistent with strategic future land use planning for the area. The proposed development footprint is consistent with the <i>Medowie Strategy</i>, and Medowie is also identified for urban development in the <i>Port Stephens Planning Strategy</i> and the <i>Lower Hunter Regional Strategy</i>.</p> <p>The Planning Proposal satisfies this Direction through proposed ameliorative measures and the identification of the subject land for urban development in planning strategies for the area.</p>
<p>2.3 Heritage Conservation</p> <p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p>	<p>Under this Direction, a planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> • 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 <i>National Parks and Wildlife Act 1974</i> (NSW) and • Aboriginal areas, 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. <p>A planning proposal may be inconsistent with this Direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or officer of the Department nominated by the Director-General) that:</p> <ul style="list-style-type: none"> • 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

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	<ul style="list-style-type: none"> • The provisions of the planning proposal that are inconsistent are of minor significance. <p>There are no items of European heritage situated on the land.</p> <p>An Aboriginal Archaeological and Cultural Heritage Impact assessment has not been undertaken on the site.</p> <p>The Planning Proposal was referred to the Worimi Local Aboriginal Land Council (WLALC) for comment. WLALC advise that at this stage they do not see any reason, nor hold any reservations, against the rezoning application being approved. WLALC clearly identify that the Planning Proposal at this time is simply to amend minimum lot size provisions applying to part of the land. The WLALC do note, however, that the Planning Proposal referred for their comment, does not do enough (if anything) to cover any impacts that may/may not be present on the subject land, and that an Aboriginal Archaeological and Cultural Heritage Impact Assessment has not been conducted. It is the WLALC position that during the development application phase, the WLALC is to be provided with ample opportunity to participate in/conduct an AACHIA assessment of the area, prior to any works commencing.</p> <p>The provisions of Clause 5.10 <i>Heritage conservation</i> of the <i>Port Stephens Local Environmental Plan 2013</i> will also apply to future development.</p> <p>The Proponent also advised in writing on 11 May 2015 that "...liaison with WLALC during the Development Application phase, subsequent to adoption of the Planning Proposal would be beneficial. The guidelines contained within the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales have been observed during preparation of the Planning Proposal, and these guidelines shall also apply at Development Application stage"</p> <p>The Planning Proposal does not provide any additional protections to facilitate the conservation of Aboriginal heritage at this</p>
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	stage. The Planning Proposal is consistent with this Direction, by the advice of the WLALC and, at least, the provisions of the <i>Port Stephens Local Environmental Plan 2013</i> to manage potential for impact on Aboriginal heritage at subsequent stages of the development.
3.1 Residential Zones 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.	The Planning Proposal is consistent with this Direction because it will provide housing in accordance with the <i>Lower Hunter Regional Strategy</i> , <i>Port Stephens Planning Strategy</i> and the <i>Medowie Strategy</i> . The Planning Proposal will facilitate the creation of approximately 15-20 allotments. The Planning Proposal is consistent with this Direction.
3.3 Home Occupations The objective of this direction is to encourage the carrying out of low impact small businesses in dwelling houses.	The Planning Proposal does not affect the permissibility of home occupations. The Planning Proposal is consistent with this Direction.
3.4 Integrating Land Use and Transport The objective of this direction is to ensure that urban structures, building forms, land use	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. The proposed change to minimum lot size provisions is consistent with adopted planning

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<p>locations, development designs subdivision and street layouts achieve the following objectives:</p> <p>Improving access to housing, jobs and services by walking, cycling and public transport.</p> <p>Increasing the choice of available transport and reduce dependence on cars.</p> <p>Reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car.</p> <p>Supporting the efficient and viable operation of public transport services.</p> <p>Providing for the efficient movement of freight.</p>	<p>strategies for the area and assist in achieving the integration of land use and transport.</p> <p>The site is located close to the urban centre of Medowie and immediately adjacent to a school. It provides the opportunity to improve access to housing, jobs and services by walking, cycling and public transport, and reduce dependence on cars.</p> <p>The Planning Proposal supports the future efficient and viable operation of an improved public transport system by increasing population density close to the town centre.</p> <p>The Planning Proposal is consistent with this Direction.</p>
<p>3.5 Development Near Licensed Aerodromes 3.5</p> <p>The objectives of this direction to ensure the efficient and safe operation of aerodromes, ensure their operation is not compromised by incompatible future adjoining land uses</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>Medowie is located near the Williamtown RAAF Base/Newcastle Airport and the Salt Ash Air Weapons Range. Although the subject land is not affected by the former Australian Noise Exposure Forecast (ANEF) 2012 map or the 2025 map, land outside of ANEF contours can still be affected by aircraft noise and activity.</p> <p>Defence does not support the Planning Proposal. The Department of Defence advises that the subject site is located outside of the ANEF contours</p>

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	<p>for RAAF Base Williamtown however it may be periodically overflown by RAAF aircraft exposing future residents to high amounts of aircraft noise.</p> <p>Any inconsistency with of the Planning Proposal with this Direction is justified by the land's identification for urban development in planning strategies for the area, and the sites location within the existing area of Medowie. Future development will not be subject to aircraft noise considerations under the <i>Port Stephens Development Control Plan 2014</i> and <i>Port Stephens Local Environmental Plan 2013</i>, and is acceptable under the <i>Port Stephens Aircraft Noise Policy 2010</i> and is not located within the related <i>Aircraft Noise Planning Area</i> (an ANEF 2012 and 2025 composite map).</p> <p>The Planning Proposal is consistent with this Direction. The site is not located within ANEF contours and is identified for urban development in planning strategies for the area.</p>
<p>4.1 Acid Sulfate Soils</p> <p>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.</p>	<p>The site is shown as within a very low risk category for acid sulphate soils (Category 5 – Works within 500m of an adjacent class on the Acid Sulfate Soils Map under the <i>Port Stephens Local Environmental Plan 2013</i>).</p> <p>Appropriate measures to be taken at the development stage to avoid adverse impacts from the presence of acid sulphate soils under Clause 7.1 <i>Acid Sulfate Soils</i> of the <i>Port Stephens Local Environmental Plan 2013</i>.</p> <p>The Planning Proposal is consistent with this Direction.</p>
<p>Flood Prone Land 4.3</p> <p>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 <i>Floodplain Development Manual 2005</i>, and that the</p>	<p>Part of the site is flood prone land as shown on the following map. The Planning Proposal is seeking to change minimum lot size provisions on the elevated part of the site fronting Waropara Road (only) and is not identified as flood prone land. Site drainage issues will be addressed at a following stage of the development process.</p>

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	<p>The Proponent submitted a <i>Bushfire Threat Assessment</i> for a superseded development concept in 2005 that addressed the (now superseded) bushfire protection requirements (refer to <i>Bushfire Threat Assessment</i>, Wildthing Environmental Consultants, 2005).</p> <p>The Planning Proposal was referred to the RFS who comment that based upon an assessment of the documentation received the NSW RFS raises no concerns with the Planning Proposal. RFS advise that, without having a plan for further subdivision it is difficult to ascertain compliance with <i>Planning for Bushfire Protection 2006</i>, specifically Asset Protection Zones. However, given the minimum size of any proposed lots there are no foreseen compliance issues.</p> <p>Amongst other matters the RFS also notes that any future development proposals must comply with <i>Planning for Bushfire Protection 2006</i>.</p> <p>Future subdivision of the site will be required to be assessed against the provisions of <i>Planning for Bushfire Protection 2006</i>. Notwithstanding, any strict non-compliance with the terms of this Direction are justified by the RFS raising no concerns with the Planning Proposal proceeding.</p> <p>Any inconsistency of the Planning Proposal with this Direction is justified by the likelihood of future development meet the requirements of <i>Planning for Bushfire Protection 2006</i> and the recent advice of the RFS.</p>
<p>Implementation of Regional Strategies 5.1</p> <p>The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.</p>	<p>Medowie is identified as a proposed urban area in the <i>Lower Hunter Regional Strategy</i> with boundaries to be defined through local planning. The Planning Proposal is consistent with the local <i>Medowie Strategy</i> which identifies part of the site fronting Waropara Road for residential development.</p> <p>The Planning Proposal is consistent with this Direction.</p>

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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 flora and fauna report submitted by the Proponent (for a superseded development footprint) provide the following conclusions that remain relevant for the potential effects of the current Planning Proposal:

"It is proposed that land located on Waropara Road, Medowie be rezoned to allow for residential development. Lot 10 DP 1051742 was approximately 6.1 hectares in area and was located on the western outskirts of Medowie along the eastern side of Waropara road. Generally the site had an easterly aspect with a gradual slope, which became relatively flat in the western portion. The site currently contained no development; however the present native forest cover had been subjected to past clearing and weed incursion leaving some areas sparse of trees and/or understorey. The far eastern portion of Lot 10 was found to be located on relatively low swampy ground. A drainage canal cuts through the far north-east corner of this lot entering from the north and exiting to the east.

...

Two broad native vegetation assemblages were found to occur on site: Coastal Plains Smooth-barked Apple Forest and Coastal Plains Smooth-barked Apple – Melaleuca Woodland. These assemblages were present as relatively intact communities despite disturbance in the form of past clearing and grazing as well as ongoing periodic management for bushfire purposes. Their occurrence was based on topography, soil type and soil moisture.

The Coastal Plains Smooth-barked Apple – Melaleuca Swamp Woodland community identified on the site is consistent with the Endangered Ecological Community 'Swamp Sclerophyll Forest on Coastal Floodplains'. This community occupies the eastern end of the site and gradually intergrades westward into Coastal Plains Smooth-barked Apple Forest in the centre and west of the site; however it has been subject to various degrees of disturbance and modification, notably from recurring slashing for bushfire hazard reduction purposes.

...

No threatened flora species were identified on site during any of the current or previous surveys, despite at least marginal habitat being available for twelve threatened flora species. Despite potential habitat being available for these species, due to the past and recurring disturbance on site it is unlikely that the proposed rezoning and subsequent development will disrupt the lifecycle of these flora species or place any viable local populations at risk of extinction.

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Three threatened fauna species were positively identified during the 2005 survey: *Phascolarctos cinereus* (Koala), *Miniopterus australis* (Little Bentwing-bat) and *Pteropus poliocephalus* (Grey-headed Flying fox). A previous survey conducted within Lot 10 (Wildthing Environmental Consultants, 2002) also found evidence of Koala utilisation, and recorded two threatened microchiropteran bat species being *Miniopterus schreibersii oceanensis* (Large Bentwingbat) and *M. australis*.

Scratch marks consistent with those made by *Phascolarctos cinereus* (Koala) were noted on the trunks of a smaller number of *Eucalyptus tereticornis* (Forest red Gum) trees within the site. Several scats positively identified as belonging to *P. cinereus* were found under a tree within the grounds of the Meadowie Christian School to the south of the site's eastern boundary. A previous survey conducted within Lot 10 DP 1051742 (Wildthing Environmental Consultants, 2002) also found evidence of Koala utilisation in the form of scratch marks and scats. Scratches on trees were commonly noted in the 2013 survey, although most were generally consistent with *Trichosurus vulpecular* (Common Brushtail Possum), which was observed on site.

...

Several specimens of grey-headed flying fox were commonly encountered flying over the site, usually from east to west during the survey. However this species was not observed feeding within the site. Seasonal foraging is available within the site in the form of flowering myrtaceous trees. No roosting habitat is considered to be present within the site. The proposed rezoning and subsequent development will result in an incremental loss of local foraging habitat for this species; however it is not likely to significantly effect any local populations of this mobile species.

Calls not inconsistent with the threatened *Miniopterus australis* were recorded during the survey and were also recorded during a previous survey conducted within Lot 10 (Wildthing Environmental Consultants, 2002). The threatened *Miniopterus schreibersii oceanensis* was also recorded during the previous survey. The site contains potential hunting habitat for both these species of microchiropteran bat as part of a larger hunting range. Roosting habitat in the form of caves/culverts, which are required by these two microchiropteran species, is absent. However a limited amount of less preferred roosting habitat is available for these species which have been reported to occasionally utilise tree hollows. It is unlikely that the proposed rezoning and subsequent development will disrupt the life cycle of these bat species or place any viable local populations at risk of extinction.

Of the 46 remaining threatened fauna species considered in this report, 32 were considered to have potential habitat resources of varying

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quality available within the site. Whilst the site provides some foraging/hunting resources it represents a relatively small area of the extensive potential habitat for these species in the Medowie locality. As such it is unlikely to be crucial to the survival of any population of these species. Considering the degree of disturbance already apparent on site and the widespread availability of similar habitat in the surrounding area, the proposal is unlikely to affect the life cycle of any species considered such that a viable local population is likely to be placed at risk of extinction."

(Wildthing Environmental Consultants, March 2014: 53-55)

The OEH comment that some of the vegetation likely to be affected by the Planning Proposal is an endangered ecological community and that habitat for potentially 12 threatened flora species and three threatened fauna species will be removed, and there are records of Koalas, Grey-headed Flying-foxes and threatened microbats for the site. OEH is of the opinion that a bio-banking assessment under the Biodiversity Banking and Offsets Scheme would provide a transparent framework to calculate the required amount of offset, and acknowledge that this is a voluntary process but believes it provides a valuable insight and quantitative appraisal into an acceptable offset package to compensate the likely impacts of the development (OEH 7, October 2014).

The Proponent has been provided with the advice of OEH and has not undertaken a bio-banking assessment, and submits that the Planning Proposal has taken into consideration the matters raised by OEH as follows:

Threatened species of flora, fauna and ecological communities, and offset of impacts upon vegetation:

"A Seven Part Test and Koala Habitat Assessment under the Port Stephens Comprehensive Koala Plan of Management (CKPOM) were completed over the subject site by Wildthing Environmental Consultants. The proposed amendment to the Lot Size Map has been reduced from the whole of the site (6.1ha), to just the western portion of the site (2.4ha), which greatly reduces or avoids the potential impacts upon the identified threatened species:

- *The proposed amendment area does not contain Preferred Koala Habitat or defined Habitat Buffers and does not contain any koala feed trees.*
- *Movement of koalas through habitat linking areas can be encouraged through measures such as street tree planting, suitable fencing, exclusion of dogs, and defined development envelopes.*
- *Endangered Ecological Community (EEC) 'Swamp Sclerophyll Forest on Coastal Floodplains' occupies the eastern end of the site, and gradually integrates westward towards the proposed amendment area; however it has been subject to various degrees of disturbance and modification, notably from recurring slashing for bushfire hazard reduction purposes. Although the Proposal may result in the removal of*

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some of this community, the retention and improvement of higher quality areas of this community, in the east of the site, can be achieved through establishment of broad Habitat Management Zones.

- The presence of residential development and clearing on three sides of this site would mean that no area of known habitat is likely to be isolated by the development of this site for threatened species.*
- The Seven Part Test determined that the Proposal is not likely to significantly affect any local populations of Grey-headed Flying-fox and it is not likely to disrupt the life cycle of microbat species or place any viable local populations at risk of extinction.*

...

The Medowie Strategy identifies the eastern part of the site as being within the preferred biodiversity area. It is intended that a Habitat Management Zone (HMZ) is established within this area to maintain the habitat linkage from the north-east to the south-east of the site, and improve the existing vegetation community through weed control and replanting. The mechanism for creation of the HMZ would be via a Positive Covenant under the Conveyancing Act 1919".

(refer to Carman Surveyors advice 28 October 2014)

Council assessment is that it is satisfied that the Planning Proposal will not have any significant impact on both the Preferred Koala Habitat and the Swamp Sclerophyll EEC. Ameliorative measures must be implemented at the development application stage, and a habitat management zone established in the eastern portion of the site protected under a positive covenant under the *Conveyancing Act 1919*.

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

Environmental

Figure 4 *Vegetation Communities on the Site* (extract from the Proponent's Flora and Fauna Report) shows the primary impact of the Planning Proposal will be on Coastal Plains Smooth Barked Apple Forest in various condition including: 'intact understorey'; 'disturbed understorey'; and 'open woodland – maintained understorey'. This vegetation type is located on the elevated part of the site subject to a change in minimum lot size provisions by the Planning Proposal. Smaller areas of Coastal Plains Smooth Barked Apple – Melaleuca Swamp Woodland in various condition but primarily 'disturbed understorey' 'canopy and understorey previously removed' will be affected.

Figure 3. Vegetation communities on site.

The Flooding and Drainage Study submitted by the Proponent (for a superseded development footprint) provides a description of the drainage characteristics of the site (refer to *Flooding and Drainage Study*, Carman Surveyors, Revision B, October 2013). The Planning Proposal seeks only to change minimum lot size provisions on the elevated part of the site fronting Waropara Road that is not flood prone. A drainage solution for the site will be established during the development application stage.

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

Development of the site will support existing businesses in Medowie through an increase in population. The Planning Proposal will facilitate the creation of approximately 15 to 20 additional allotments.

SECTION D – State and Commonwealth interests**11. Is there adequate public infrastructure for the planning proposal?**

Developer contributions for local infrastructure will apply to the future development of the land in accordance with the *Port Stephens Section 94 Development Contributions Plan 2007*.

The site subject of the Planning Proposal will also be identified as an Urban Release Area and subject to the provisions of Part 6 *Urban Release Areas* of the *Port Stephens Local Environmental Plan 2013* to ensure arrangements are in place to ensure the adequate provision of designated State and public utility infrastructure (refer to Clauses 6.1 *Arrangements for designated State public infrastructure* and Clause 6.2 *Public utility infrastructure of the Port Stephens Local Environmental Plan 2013*).

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

The Planning Proposal was referred to the following authorities for comment:

- NSW Office of Environment and Heritage;
- NSW Local Aboriginal Land Council;
- NSW Rural Fire Service;
- NSW Roads and Maritime Services;
- Hunter Water Corporation;
- NSW Department of Primary Industries (Mineral Resources); and
- Commonwealth Department of Defence.

NSW Office of Environment and Heritage

OEH reviewed the Planning Proposal and provided the following comments on 7 October 2014:

Biodiversity

- The proposed increase in lot yield is likely to result in the removal of vegetation in each lot, and the degradation of habitat mapped as "preferred link over marginal habitat" in the CKPOM. Ecological surveys have identified that some of the vegetation likely to be affected by the Planning Proposal is an EEC and that habitat for potentially 12 threatened

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flora species and 3 fauna species, including hollow-bearing trees, will be removed. There are records of koalas, grey-headed flying foxes and threatened micro bats for the site.

- The Medowie Strategy, which appears to include this development, outlines that impacts on vegetation will need to be offset. The overarching goal for conservation in NSW is that biodiversity and other environmental values of soil, water quality and salinity, must be 'improved or maintained'. This means that the gains for biodiversity must be greater than or equal to any losses resulting from clearing or other forms of degradation of biodiversity values. This goal is reflected within the NSW State Plan and the relevant provisions of the *Threatened Species Conservation Act 1995* (NSW) and the *Native Vegetation Act 2003* (NSW).
- OEH is of the opinion that a biodiversity assessment using Bio-Banking Assessment Methodology under the Biodiversity banking and Offsets Scheme would provide a transparent framework to calculate the required amount of offset. OEH acknowledges that this is a voluntary process but believes it provides a valuable insight and quantitative appraisal into an acceptable offset package to compensate the likely impacts of the development.

Section 117 Direction 2.1 Environmental Protection Zones

- The Section 117 Direction requires justification for a planning proposal which leads to a reduction in level of environmental protection. In this case the reduction in environmental protection is caused by an intensification of dwelling density from one dwelling per hectare to one dwelling per 1,000m². The R5 Large Lot Residential Zone includes the provisions "to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality. The Planning Proposal therefore appears to be inconsistent with this Direction.
- The justification provided by Council is the existence of the *Medowie Strategy*, endorsing development in certain precincts of Medowie. It should be noted that the area is identified as Stage 1 development, but that the Conservation Strategy does not identify the subject land as belonging to the area in which "vegetation will be removed or modified."
- The *Medowie Strategy* requires that development should minimise the removal of trees, and not fragment koala linkage areas so that koala movement is not impeded. It is not clear from the Planning Proposal how impacts will be minimised, apart from the mention of the use of subdivision design. It is questionable that this will be possible at the proposed dwelling density. It is therefore recommended that Council seeks clarification of how the Proponent aims to avoid, mitigate and offset biodiversity losses.

Flooding

- The Medowie Flood Study found that the southern half of the subject lot is affected by the 1% AEP flood. Any planning proposal would have to be accompanied by strategies and controls to manage this flood risk without adversely affecting neighbouring properties.

**ITEM 1 - ATTACHMENT 1 PLANNING PROPOSAL - 8 WAROPARA ROAD
MEDOWIE.**Aboriginal Cultural Heritage

- An important component of the environmental assessment process is the consideration of potential impacts to Aboriginal cultural heritage. An Aboriginal and Cultural Heritage Impact Assessment have not been undertaken on the site to date. The importance of protecting the Aboriginal cultural heritage is reflected in the provisions of the *National Parks and Wildlife Service Act 1974*. The NPW Act clearly established that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. It should be noted that local Aboriginal stakeholders should be consulted on this matter.
- The Proponent should note that the NPW Act has been amended. OEH encourages the Proponent to familiarise with the new requirements and implement these amendments during the development, and any subsequent assessment process.
- OEH also states that, in the event that any inadvertent damage does occur to Aboriginal cultural heritage values as a result of any development works, there is potential for an offence under the NPW Act, irrespective of any development determination granted under the EP and A Act.

The Worimi Local Aboriginal Land Council provided the following comments on the Planning proposal on 10 April 2014:

- At this high-end stage of the Planning Proposal the Worimi LALC does not see any reasons, nor hold any reservations against the Planning Proposal proceeding, and clearly identify that the proposal at this stage is to amend minimum lot size provisions applying to part of the land from 1 hectare to 1,000m².
- The Worimi LALC notes however the sections in the Planning Proposal referring to Ministerial Direction 2.3 *Heritage Conservation* and Section C *Environmental, Social and Economic Impact* (page 13) and respond accordingly:
- In Worimi LALC opinion, the report referred to does not do enough (if anything) to cover any impacts that may be placed on Aboriginal culture and heritage, that may/may not be present within Lot 10 DP 1051742. It is also clearly highlighted that an Aboriginal Archaeological and Cultural Heritage Impact Assessment has not been conducted, and it is Worimi LALC position that during the development application phase, it is provided with ample opportunity to participate/conduct an AACHIA assessment of the area, prior to any works commencing.

Planning Proposal Response

- Council assessment is that it is satisfied that the Planning Proposal will not have any significant impact on both the Preferred Koala Habitat and the Swamp Sclerophyll EEC. To achieve this, ameliorative measures must be implemented at subsequent stages, and a habitat management zone established in the eastern portion of the site protected under a positive covenant under the *Conveyancing Act 1919*.

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- The Proponent reviewed the comment from the Worimi LALC and advised 11 May 2015 that liaison with the LALC during the development application phase, subsequent to the adoption of the Planning Proposal would be beneficial, and that the guidelines contained within the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* have been observed during preparation of the Planning Proposal, and these guidelines shall also apply at development application stage.

NSW Rural Fire Service

The NSW Rural Fire Service provided the following comments on 27 November 2014:

- Based upon an assessment of the documentation received, RFS raises no concerns with the Planning Proposal but provides some advice in respect to bushfire matters.
- The RFS notes that the Planning Proposal has reduced the minimum lot size from 10,000m² to 1,000m². Without having a plan for future subdivision it is difficult to ascertain compliance with *Planning for Bushfire Protection 2006*, specifically Asset Protection Zones. However, given the minimum size of any proposed lots there are no foreseen compliance issues.
- RFS advises that any future development proposals must comply with *Planning for Bushfire Protection 2006*. Any subdivision or Special Fire Protection Purpose developments will be captured under Section 79BA of the *Environmental Planning and Assessment Act 1979* (NSW).
- The RFS advises a number of points that should be taken into consideration in developing the land for residential purposes as required by PFBP 2006.
- In relation to future development uses on bushfire-prone land, there is a requirement for a bushfire assessment to be prepared in order to inform the development potential of individual sites which are mapped as bushfire prone. The bushfire assessment should ensure that the development can meet the aims and objectives of *Planning for Bushfire Protection 2006* and should also address relevant performance criteria.
- Whilst a copy of the *Bushfire Threat Assessment* (Wildthing Environmental Consultants, 2005) was not provided with this Planning Proposal, it is noted that there have been many advances in bush fire requirements since its original lodgement and that any subsequent report would need to be updated in line with the current legislative requirements.

Planning Proposal Response

Future subdivision of the site will be required to be assessed against the provisions of *Planning for Bushfire Protection 2006*. The RFS raising no concerns with the Planning Proposal proceeding.

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MEDOWIE.****Roads and Maritime Services**

Roads and Maritime Services advised 9 October 2014 it has no objection to the Planning Proposal and considers that the estimated yield will have no significant impact on the classified (State) road network.

Hunter Water Corporation

Hunter Water Corporation (HWC) raised concerns about potential impact on water quality given the location of the site within a Drinking Water Catchment and provided the following comments on 10 April 2015:

- HWC reviewed the explanatory Note, Drainage Strategy and the Flood Drainage Report provided for the original proposal (superseded and which indicated minimum lot size of 2,000m²) and comment that the modelling only shows design storm flows, not runoff quality. HWC note that WSUD measures are proposed "where feasible", and comment that the proposed stormwater measures are very likely inadequate for providing neutral or beneficial effect on water quality, and that MUSIC modelling would be required to demonstrate this. HWC comment that proposed detention basin is informal, created with bunds, and would discharge/overflow to Campvale Drain.
- The Planning proposal could include up to 20 lots of half the original size (i.e. now 1,000m²) with corresponding increase in the percentage of impervious area per lot and increase in total impervious area in the western part of the subject land, plus up to 4 x 1 ha lots in the flood-prone portion to the east/rear of the subject land. There are no updated plans or strategies to support the new layout with regards to water runoff quality and how it could achieve neutral or beneficial effect (NORBE).
- HWC are of the opinion that 20 x 1,000m² lots at the western part of the subject land is too dense and more land would have to be dedicated to stormwater structures/features that re shown to achieve neutral or beneficial effect under the 1:100 ARI. HWC comment that leaving demonstration of neutral or beneficial effect to be established at the development control plan and development application stages ignores the likelihood that the development concept has already 'run out of space' to achieve neutral or beneficial effect, but proceeding now could establish the expectation of a high lot yield for the Proponent, who may be reluctant to reduce yield at subsequent stages, to achieve neutral or beneficial effect.
- HWC recommends mandating WSUD measure on each lot, and a reduction in the total number of lots, unless modelling can be provided pre-zoning to demonstrate that neutral or beneficial effect can be achieved for the current Planning Proposal.

On 11 May 2015 the Proponent responded to the concerns of Hunter Water Corporation:

- The risk regarding lot yield is acknowledged, and the current predicted maximum lot yield (18 x 1,000m² & 3 x 1ha) is already less than that assumed by HWC (20 x 1,000m² & 4 x 1ha). The Proponent advises that

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an experienced stormwater consultant will prepare a water sensitive design strategy and undertake MUSIC modelling, and comments that the Planning Proposal is purely an amendment to minimum lot size and there are no mechanisms to "mandate WSUD measures" and "a reduction in the total number of lots" at this stage. The Proponent submits that the detailed modelling would be more efficiently and effectively completed at development application stage when a subdivision layout is proposed.

On 26 May 2015 HWC provided the following updated advice:

- HWC understands that the updated development concept proposes 18 x 1,000m² lots within the front portion of the site and 3 x 1 hectare lots within the rear portion of the site, and that this represents a reduction in lots compared to the previous estimate provided to them by email on 2 March 2015.
- HWC further notes that the Proponent has acknowledged their concerns regarding water quality and has advised that a stormwater quality consultant will be engaged to prepare a Water Sensitive Urban Design Strategy and undertake MUSIC modelling at the development application stage following any rezoning.
- HWC would expect that the stormwater management plan for any future subdivision will include water sensitive urban design measures and will include modelling to demonstrate neutral or beneficial effect (NORBE) on water quality. A development is considered to meet NORBE if, according to MUSIC modelling, the development:
 - Has no identifiable potential impact on water quality, or
 - Will contain any water quality impact on the development site and prevent it from reaching any water course, waterbody or drainage depression on the site, or
 - Will transfer any water quality impact outside the site where it is treated and disposed to standards approved by the consent authority.
- Given the stated intention to route stormwater to Campvale Drain, and in consideration of the length of time that this application has been with Council HWC considers demonstration of NORBE appropriate at the development application stage.

Planning Proposal Response

- Proceed with the Planning Proposal which is consistent with planning strategies and will increase potential development density on the site. The Proponent has acknowledged that further work will be required at subsequent stages of the planning and development process to demonstrate NORBE on water quality.

Department of Primary Industries (Mineral Resources)

NSW Trade and Investment – Mineral Resources advised 24 September 2014 that it has no concerns in relation to the Planning Proposal.

ITEM 1 - ATTACHMENT 1 PLANNING PROPOSAL - 8 WAROPARA ROAD MEDOWIE.**Commonwealth Department of Defence**

The Department of Defence provided the following comments on 13 October 2014:

- Notes that a previous proposal at the subject site for reducing minimum lot size provisions was approved by the delegate of the then Minister for Planning and Infrastructure on 18 July 2013.
- The subject site is located outside of the Aircraft Noise Exposure Forecast Contours for RAAF Base Williamstown. However, the site may be periodically overflown by RAAF aircraft exposing potential future residents to high amounts of aircraft noise. On this basis Defence does not support the Planning Proposal.

Planning Proposal Response

- Proceed with the Planning Proposal. The subject land is identified for urban development in planning strategies for the area, and is located within the existing area of Medowie. Future development will not be subject to aircraft noise considerations under the *Port Stephens Development Control Plan 2014* and *Port Stephens Local Environmental Plan 2013*, and is acceptable under the *Port Stephens Aircraft Noise Policy 2010* and is not located within the related *Aircraft Noise Planning Area*.

Part 4 - Mapping

The proposed map layer amendments are included as attachments to the Planning Proposal as follows:

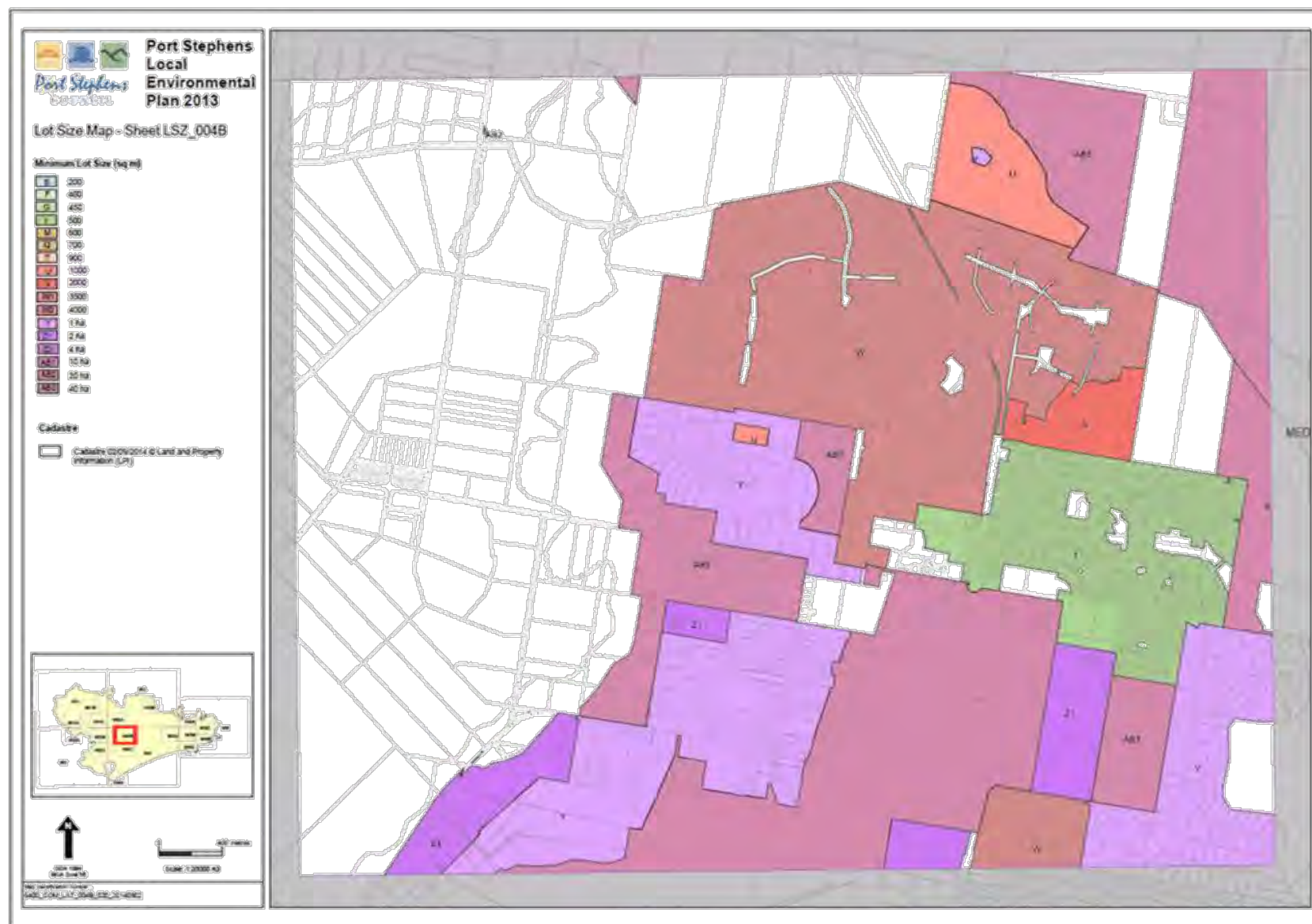
Attachment One – Draft Minimum Lot Size Map

Attachment Two – Draft Urban Release Area Map

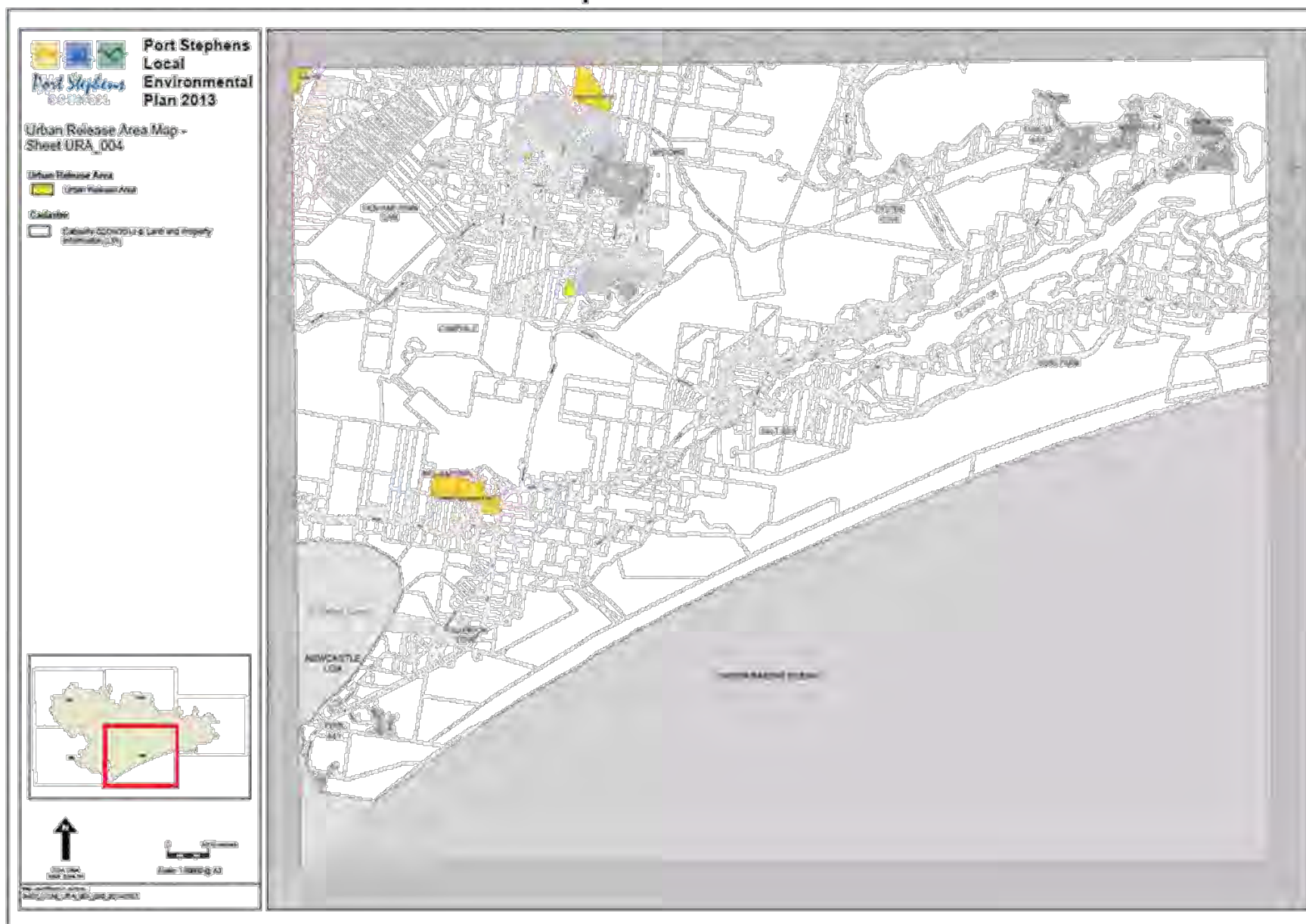
Part 5 - Details of Community Consultation

The Planning Proposal was placed on public exhibition from 11 September 2014 to 2 October 2014. One submission was received from the public objecting to the proposed increase in permissible development density. The key issue raised is the future change to the semi-rural character and amenity of the area. The Planning Proposal will increase permitted development density and contribute to a change in the character of the area from semi-rural to residential. However, the change is consistent with strategic planning for the area and will facilitate delivery of additional land for housing. Other issues raised include: drainage; the condition and safety of roads; footpath construction associated with the nearby school and; lighting and noise impacts from the nearby school particularly on future residents. These issues will need to be addressed in further detail at the development control plan and development application stages.

Attachment One – Draft Minimum Lot Size Map



Attachment Two – Draft Urban Release Area Map



ITEM 1 - ATTACHMENT 2 SITE LOCATION MAP.



ITEM 1 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

SUBMISSION SUMMARY AND PLANNING RESPONSE

Sub.	Summary of Submission	Planning Proposal Response	Recommendation
Public Submission	<p>a. Objects to the proposed change in minimum lot size to 1,000m²</p> <p>b. The Planning Proposal is a surprise given the opposition to the <i>Medowie Strategy</i>, and that this area was no longer included for medium or high density zoning and is inappropriate for the area.</p> <p>c. The notion of what is appropriate for a neighbourhood is different for residents as opposed to Council or a developer. Developments can affect an area for example the approval of the nearby church and school has had an impact.</p> <p>d. The drawback for nearby residents was living in a prestige rural residential area. Residents are mindful of the semi-rural character and respectful of trees and wildlife. This concept was undermined by the approval of the school and subsequent clearing. It is a concern that the same will happen to the land subject of the Planning Proposal.</p> <p>e. There are drainage issues. The subject land floods during downpours and the drain between 19 and 21 Waropara Road, opposite the subject land, fills and floods the road.</p> <p>f. The condition of existing roads is an issue. There will need to be road infrastructure works completed by developers to maintain safety.</p>	<p>a. The land is identified for future urban development in planning strategies for the area.</p> <p>b. The <i>Medowie Strategy</i> was adopted by Council in 2009 following consideration of submissions and identifies the land for residential development.</p> <p>c. The land is identified for future urban development in planning strategies for the area. Council previously resolved to prepare a Planning Proposal to investigate its implementation.</p> <p>d. The likely future change to the semi-rural character of the area is noted and acknowledged. The Planning Proposal will increase permitted development density and contribute to a change in the character of the area from semi-rural to residential. However, this change is consistent with strategic planning for Medowie, and will facilitate the delivery of additional land for housing.</p> <p>e. Drainage infrastructure to service the site will be addressed in further detail at the development control plan and development application stages, including the culvert under Waropara Road.</p> <p>f. Road infrastructure to service the development will be addressed in greater detail at the development control plan and development application stages to meet engineering standards. Local traffic and transport infrastructure contributions will also be collected.</p>	<p>Proceed with the Planning Proposal as recommended and in accordance with strategic plans for Medowie. Design matters will be addressed in following stages of the planning process.</p>

ITEM 1 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

	<p>g. There is a road safety issue. The straight course of Waropara road was changed to accommodate a bus turning lane for the school. Despite road line markings drivers tend to follow the 'old road' and divert off the road in front of 19 Waropara Road to keep a straight driving line. The 40km/h safety zone does not slow drivers down.</p> <p>h. Were previously advised that as part of the school development a contribution was to be made to a footpath along Waropara Road. To date there is still no footpath. The traffic congestion during school times is very heavy as vehicles and buses turn into school grounds. The entrance to the school is only metres away from the entrance to the land subject of the Planning Proposal. This will create a dangerous and chaotic situation.</p> <p>i. The 'no parking' signs along Waropara road in the vicinity of the school are not adhered to and Waropara Road is not wide enough to accommodate parked cars, effectively creating blind spots for residents leaving their properties and reducing roadway width, creating a safety issue.</p> <p>j. Night time lighting up of the school and night time noise from the church is intrusive. The objections to this have been well voiced by residents over the years. Future residents of the subject land will be impacted.</p> <p>k. Request that Council will consider the serious implications on both the neighbourhood and Council that the smaller lots will have.</p>	<p>g. Compliance with road markings and signs is a regulatory issue.</p> <p>h. Refer to Conditions of Consent for DA 16-2000-1774 (Meadowie Christian School). A footpath has been constructed along the road reserve in front of the school. Road infrastructure, including provision of an intersection to safely service the subject land, will be addressed in greater detail at the development control plan and development application stages.</p> <p>i. Regulation of 'no parking' zones is a compliance issue. Future design of access to the site will need to meet relevant standards and provided in detail at the development control plan and subdivision development application stages.</p> <p>j. This issue is able to be considered in further detail at the development control plan and development application stages. The proximity of the subject land to the school will also have advantages for future residents of the subject land.</p> <p>k. The matters raised relevant to the Planning Proposal are addressed in the report and attachments for consideration by Council.</p>	
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ORDINARY COUNCIL - 27 OCTOBER 2015 - ATTACHMENTS

ITEM 1 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

Worimi Local Aboriginal Land Council [WLALC]	a. At this high-end stage of the Planning Proposal the WLALC does not see any reasons, nor hold any reservations against the Planning Proposal proceeding, and clearly identify that the proposal at this stage is to amend minimum lot size provisions applying to part of the land from 1 hectare to 1,000m ² . The WLALC notes however the sections in the Planning Proposal referring to Ministerial Direction 2.3 <i>Heritage Conservation</i> and Section C <i>Environmental, Social and Economic Impact</i> (page 13) and respond accordingly: in WLALC opinion, the report referred to does not do enough (if anything) to cover any impacts that may be placed on Aboriginal culture and heritage, that may/may not be present. It is also clearly highlighted that an Aboriginal Archaeological and Cultural Heritage Impact Assessment has not been conducted, and it is WLALC position that during the development application phase, it is provided with ample opportunity to participate/conduct and AACHIA assessment of the area, prior to any works commencing.	a. The Proponent reviewed the comment from the WLALC and advised 11 May 2015 that liaison with the LALC during the development application phase, subsequent to the adoption of the Planning Proposal would be beneficial, and that the guidelines contained within the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW</i> have been observed during preparation of the Planning Proposal shall also apply at development application stage.	Proceed with the Planning Proposal as recommended. The Applicant will need to address heritage provisions of the Port Stephens LEP 2013 and NSW legislation for the protection of Aboriginal heritage. The Proponent is strongly encouraged to liaise with the WLALC through the development process.
Office of Environment & Heritage [OEI]	a. The increase in yield is likely to result in the removal of vegetation in each lot and the degradation of habitat mapped as 'Preferred Link Over Marginal Habitat' in the CKPOM. Surveys have identified that some of the vegetation likely to be affected by the Planning Proposal is an EEC and that habitat for potentially 12 threatened flora species and 3 fauna species, including hollow-bearing trees, will be removed. There are records of koalas, grey-headed flying foxes and threatened micro bats for the site.	a. Council is satisfied that the Planning Proposal will not have any significant impact on both the Preferred Koala Habitat and Swamp Sclerophyll EEC. It is acknowledged that the proposed minimum lot size does not leave much scope for Performance Criteria b) and d) of the CKPOM to be met. Ameliorative measures must be implemented at the development application stage, and a habitat management zone established in the eastern portion of the site protected under a positive covenant under the <i>Conveyancing Act 1919</i> .	Proceed with the Planning Proposal as recommended and in accordance with strategic plans for Medowie. There will be some negative environmental impacts however ameliorative measures are

ITEM 1 - ATTACHMENT 3 SUBMISSION SUMMARY TABLE.

	<p>b. The <i>Medowie Strategy</i>, which appears to include this development, outlines that impacts on vegetation will need to be offset. The overarching goal for conservation in NSW is that biodiversity and other environmental values of soil, water quality and salinity, must be 'improved or maintained'. This means that the gains for biodiversity must be greater than or equal to any losses resulting from clearing or other forms of degradation of biodiversity values. This goal is reflected within the NSW State Plan and the relevant provisions of the <i>Threatened Species Conservation Act 1995</i> (NSW) and the <i>Native Vegetation Act 2003</i> (NSW).</p> <p>c. OEH is of the opinion that a biodiversity assessment using Bio-Banking Assessment Methodology would provide a transparent framework to calculate the required amount of offset. OEH acknowledges that this is a voluntary process but believes it provides a valuable insight and quantitative appraisal into an acceptable offset package to compensate the likely impacts of the development.</p> <p>d. NSW Planning Direction 2.1 <i>Environment Protection Zones</i> requires justification for a planning proposal which leads to a reduction in level of environmental protection. In this case the reduction in environmental protection is caused by an intensification of dwelling density. The R5 Large Lot Residential Zone includes the provisions "to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality". The Planning Proposal therefore appears to be inconsistent with this Direction. The justification provided by Council is the existence of the <i>Medowie Strategy</i>, endorsing development in certain precincts of Medowie. It should be noted that the area is identified as Stage</p>	<p>b. Council is satisfied that the Planning Proposal has manageable environmental impacts provided ameliorative measures are implemented at the development application stage.</p> <p>c. A biodiversity assessment using the Bio-Banking Assessment Methodology has not been undertaken and is a voluntary process.</p> <p>d. The Planning Proposal satisfies this Direction. The Planning proposal will not have any significantly adverse effects. To achieve this outcome on-site management measures must be implemented at the development application stage. They include a habitat management zone in the eastern portion of the site protected under a positive covenant under the <i>Conveyancing Act 1979</i> and illustrated by the Proponent's <i>Concept Layout and Site Revegetation Plan (ATTACHMENT 4)</i>.</p> <p>The land is also identified for urban development in planning strategies for the area.</p>	<p>proposed.</p> <p>Consistency with the 117 Direction could potentially be viewed by the Department of Planning and Environment as unresolved and require further investigation by the Proponent.</p>
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	<p>1 development, but that the Conservation Strategy does not identify the subject land as belonging to the area in which "vegetation will be removed or modified". The <i>Medowie Strategy</i> requires that development should minimise the removal of trees, and not fragment koala linkage areas so that koala movement is not impeded. It is not clear from the Planning Proposal how impacts will be minimised, apart from the mention of the use of subdivision design. It is questionable that this will be possible at the proposed dwelling density. Recommends that Council seeks clarification of how the Proponent aims to avoid, mitigate and offset biodiversity losses.</p> <p>e. The <i>Medowie Flood Study</i> found that the southern half of the subject lot is affected by the 1% AEP flood. Any planning proposal would have to be accompanied by strategies and controls to manage this flood risk without adversely affecting neighbouring properties.</p> <p>f. An important component of the environmental assessment process is the consideration of potential impacts to Aboriginal cultural heritage. An Aboriginal and Cultural Heritage Impact Assessment have not been undertaken on the site to date. The importance of protecting the Aboriginal cultural heritage is reflected in the provisions of the <i>National Parks and Wildlife Service Act 1974</i> (NSW) (NPW Act). The NPW Act clearly established that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. It should be noted that local Aboriginal stakeholders should be consulted on this matter.</p> <p>g. The Proponent should note that the NPW Act has been amended. OEH encourages the Proponent to familiarise with the new requirements and</p>	<p>e. The Planning Proposal seeks to amend minimum lot size provisions applying to the elevated part of the site fronting Waropara Road that is not flood prone.</p> <p>f. The Worimi Local Aboriginal Land Council (WLALC) has been consulted and provided comment on the Planning Proposal (refer to WLALC comments in this Submission Summary Table).</p> <p>g. The Proponent has been advised of this comment from OEH. The Proponent has been advised of this comment from OEH.</p>	
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Rural Fire Service (RFS)	<p>implement these amendments during the development, and any subsequent assessment process. OEH also states that, in the event that any inadvertent damage does occur to Aboriginal cultural heritage values as a result of any development works, there is potential for an offence under the NPW Act, irrespective of any development determination granted under the EP and A Act.</p> <p>a. Based upon an assessment of the documentation received, RFS raises no concerns with the Planning Proposal but provides some advice in respect to bushfire matters.</p> <p>b. The RFS notes that the Planning Proposal has reduced the minimum lot size from 10,000m² to 1,000m². Without having a plan for future subdivision it is difficult to ascertain compliance with <i>Planning for Bushfire Protection 2006</i>, specifically Asset Protection Zones. However, given the minimum size of any proposed lots there are no foreseen compliance issues.</p> <p>c. RFS advises that any future development proposals must comply with <i>Planning for Bushfire Protection 2006</i>. Any subdivision or Special Fire Protection Purpose developments will be captured under Section 79BA of the EP and A Act.</p> <p>d. The RFS advises a number of points that should be taken into consideration in developing the land for residential purposes as required by PFBP 2006.</p> <p>e. In relation to future development uses on bushfire-prone land, there is a requirement for a bushfire assessment to be prepared in order to inform the development potential of individual sites which are mapped as bushfire prone. The bushfire assessment should ensure that the development can meet the aims and objectives of <i>Planning for Bushfire</i></p>	<p>a. Noted.</p> <p>b. The future subdivision design will be investigated and set following the amendment to minimum lot sizes provisions.</p> <p>c. Future development will be designed to meet <i>Planning for Bushfire Protection 2006</i> (PFBP) and the future subdivision development application likely to be referred to RFS for further comment under Section 79BA of the EP and A Act.</p> <p>d. The points raised by RFS will be considered for the future design of the subdivision.</p> <p>e. The ability of individual allotments within a future subdivision of the land will be addressed in accordance with the provisions of PFBP.</p>	<p>Proceed with the Planning Proposal as recommended. Meeting the requirements of PFBP will be addressed in more detail at a following stage in the planning process.</p>
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Roads & Maritime Service (RMS)	<p><i>Protection 2006</i> and should also address relevant performance criteria.</p> <p>f. Whilst a copy of the <i>Bushfire Threat Assessment</i> [Wildthing Environmental Consultants, 2005] was not provided with this Planning Proposal, it is noted that there have been many advances in bush fire requirements since its original lodgement and that any subsequent report would need to be updated in line with the current legislative requirements.</p> <p>a. No objection to the Planning Proposal and considers that the estimated yield will have no significant impact on the classified (State) road network.</p>	<p>f. An updated bushfire threat assessment will need to be carried out to accompany a development application for subdivision of the subject land at development application stage.</p> <p>a. Noted.</p>	Proceed with the Planning Proposal as recommended
Hunter Water Corporation (HWC)	<p>a. Understands that the updated development concept proposes 18 x 1,000m² lots within the front portion of the site and 3 x 1 hectare lots within the rear portion of the site, and that this represents a reduction in lots compared to the previous estimate provided to them by email on 2 March 2015.</p> <p>b. Notes that the Proponent has acknowledged their concerns regarding water quality and has advised that a stormwater quality consultant will be engaged to prepare a Water Sensitive Urban Design Strategy and undertake MUSIC modelling at the development application stage following any rezoning.</p> <p>c. Expect that the stormwater management plan for any future subdivision will include water sensitive urban design measures and will include modelling to demonstrate neutral or beneficial effect (NORBE) on water quality. A development is considered to meet NORBE if, according to MUSIC modelling, the development:</p> <ul style="list-style-type: none"> Has no identifiable potential impact on water quality, or 	<p>a. Correct. The Planning Proposal subject of this report does propose to increase permissible development density on the low-lying eastern portion of the subject land beyond those currently permitted by the Port Stephens LEP 2013.</p> <p>b. Proceed with the Planning Proposal which is consistent with planning strategies and will increase potential development density on the site. The Proponent has acknowledged that further work will be required at subsequent stages of the planning and development process to demonstrate NORBE on water quality.</p> <p>c. A future development application for the subdivision of the subject land will need to demonstrate resolution of water quality requirements within a Drinking Water Catchment in accordance with the provisions of the Port Stephens DCP.</p>	Proceed with the Planning Proposal as recommended. Future development of the land will need to address the water quality provisions of the Port Stephens DCP.

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	<ul style="list-style-type: none"> Will contain any water quality impact on the development site and prevent it from reaching any water course, waterbody or drainage depression on the site, or Will transfer any water quality impact outside the site where it is treated and disposed to standards approved by the consent authority. <p>d. Given the stated intention to route stormwater to Campvale Drain, and inconsideration of the length of time that this application has been with Council, HWC considers demonstration of NORBE appropriate at the development application stage.</p>	d. Under the circumstances the ability to address detailed water quality requirements at the development application stage is a reasonable position.	
Department of Primary Industries (DPI)	a. No concerns in relation to the Planning Proposal.	a. Noted.	Proceed with the Planning Proposal as recommended
Department of Defence (DOD)	<p>a. Notes that a previous proposal at the subject site for reducing minimum lot size provisions was approved by the delegate of the then Minister for Planning and Infrastructure on 18 July 2013.</p> <p>b. The subject site is located outside of the Aircraft Noise Exposure Forecast Contours for RAAF Base Williamtown. However, the site may be periodically overflown by RAAF aircraft exposing potential future residents to high amounts of aircraft noise. On this basis Defence does not support the Planning Proposal.</p>	<p>a. Noted.</p> <p>b. The subject land is land is identified for urban development in planning strategies for the area, and is located within the existing area of Medowie. Future development will not be subject to aircraft noise considerations under the Port Stephens DCP and Port Stephens LEP 2013, and is acceptable under the <i>Port Stephens Aircraft Noise Policy 2010</i> and is not located within the related <i>Aircraft Noise Planning Area (ANEF 2012 and 2025 composite map)</i>.</p>	Proceed with the Planning Proposal as recommended. Future residents may experience aircraft noise from time to time however not to an extent requiring noise attenuation under the AS 2021-2015.
NSW Trade & Investment (TI)	a. TI advised 24 September 2014 that it has no concerns in relation to the Planning Proposal.	a. Noted.	Proceed with the Planning Proposal as recommended

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Further Information:

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ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

FILE NUMBERS

Council: PSC2014-03597
Department: PP_2015_PORTS_001_00 (15/03512)

SUMMARY

Subject land: 2885 Pacific Highway, Heatherbrae (Motto Farm Motel)
Lot/DP: Lot 1, DP 264023
 Lot 2, DP 264023
 Lot 3, DP 264023
 Lot 1, DP 350551
 Part Lot 101, DP807522
Proponent: Motto Farm Motel C/-TFA Project Group
Total Area: 4.9 Hectares
Existing Zoning: RU2 Rural Landscape
Proposed Clause: Amend of the *Port Stephens Local Environmental Plan 2013* (NSW) Schedule 1 – Additional Permitted Uses to permit (with consent) a 'service station', restaurant or café and 'take-away food and drink premises' on land at 2885 Pacific Highway, Heatherbrae, NSW, 2324
Delegation: Council has delegation to make this plan

BACKGROUND

In June 2014, Council received a request to amend the *Port Stephens Local Environmental Plan 2013* (NSW) for land at 2885 Pacific Highway, Heatherbrae, known as 'Motto Farm Motel' (the site). The request seeks to permit (with consent) a 'service station', 'restaurant or café' and 'take-away food premises' at the site.

The site is zoned RU2 – Rural Landscape, which currently prohibits the proposed additional land uses. The proposed works fell outside the provisions of the existing-use rights under the *Environmental Planning & Assessment Act 1979* (NSW). As a result, a planning proposal was deemed as being required to allow those stated uses on site.

A pre-lodgement meeting was held on 4 June 2014 and a request to prepare a planning proposal was lodged with Council on 13 October 2014. Council resolved on 10 February 2015 to:

- 1) *Adopt the Planning Proposal (ATTACHMENT 1) for the purposes of Section 55 of the Environmental Planning and Assessment Act 1979 to amend Schedule 1 'Additional permitted uses' of the Port Stephens Local Environmental Plan 2013 to permit (with consent) a 'service station', 'restaurant or café' and 'take-away food and drink premises' on land at 2885 Pacific Highway, Heatherbrae (Lots 1, 2 and 3, DP 264023; Lot 1, DP 350551 and Lot 101, DP 807522); and*
- 2) *Forward the Planning Proposal at (ATTACHMENT 1) to the NSW Department of Planning and Environment for a Gateway Determination.*

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In accordance with Council's resolution to prepare a planning proposal the proposal was forwarded to the Department of Planning & Environment (the Department) on the 12 February 2015. The Department subsequently advised Council of a number of key matters that had been raised by Roads & Maritime Services (RMS) in preliminary discussions, being:

- The required separation of vehicle flows for the existing motel from those of a future service station; and
- The proposed access point to the Pacific Highway to ensure adequate acceleration from the site and to minimise traffic conflict.

These matters were resolved by Council, the applicant and RMS. A Gateway Determination (**ATTACHMENT 1**) was subsequently received on 26 June 2015. The proposal was then placed on public exhibition for 35 days during which three submissions were received during public exhibition from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS) (**ATTACHMENT 2**). No objections to the proposed development were received.

However, the issue of traffic and site contamination were raised through the public exhibition stage, but are able to be dealt with at the development application stage.

SITE

The Site totals 4.9 hectares and is located on the western side of the Pacific Highway at Heatherbrae. The lots are legally described as Lot 1, 2 & 3, DP264023, Lot 1, DP 350551 and Part Lot 101, DP 807552.

A general industrial and business zone for bulky goods occupies the land to the immediate east; large lot residential development is situated to the north; flood prone agricultural land to the west; and a mix of rural and residential land to the south. The site has direct access and frontage to the Pacific Highway, which is the key arterial road along the Australian eastern seaboard. The *Port Stephens Council. 2011, 'Port Stephens Planning Strategy (PSPS)'* includes traffic forecasts that state that daily vehicle movements will increase from 39,528 in 2005 to 131,769 in 2031. At the same time, land has been reserved to by-pass Heatherbrae in the near future.

The *Port Stephens Council. 2011, 'Draft Raymond Terrace and Heatherbrae Strategy'* seeks to facilitate the growth of both Raymond Terrace and Heatherbrae into their role as a major regional centre as identified under the *NSW Government. 2006, 'Lower Hunter Regional Strategy'* (LHRS).

Figure 1 – Aerial Map (p. 5) and **Figure 2 – Cadastral Map** (p. 6) provide contextual illustrations of the Site – 3385 Pacific Highway, Heatherbrae.

PART 1 – Objective of the proposed Local Environmental Plan

The objective of this proposal is to enable the redevelopment of part of the existing motel to accommodate a service station development. The motel will also seek to expand to include ancillary dining and take-away facilities.

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

The objective of this Proposal will be achieved by amending *the Port Stephens Local Environmental Plan 2013 (NSW) Schedule 1 – Additional Permitted Uses* by inserting the following additional clause:

Schedule 1 – Additional permitted uses

7 – Use of certain land at 2885 Pacific Highway, Heatherbrae

- (1) This Clause applies to land at 2885 Pacific Highway, Heatherbrae, being Lots 1, 2 and 3, DP 264023; Lot 1, DP350551; and Lot 101, DP 807522.
- (2) Development for the purpose of a service station, restaurant or café and take-away food and drink premises is permitted with development consent.

These uses are currently defined as follows by the LEP:

- Service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:
 - a. The ancillary sale by retail of spare parts and accessories for motor vehicles,
 - b. The clearing of motor vehicles,
 - c. Installation of accessories,
 - d. Inspecting, repainting and servicing of motor vehicles (other than body building, panel beating, spray painting or chassis restoration),
 - e. The ancillary retail selling or hiring of general merchandise or services or both.
- Restaurant or café means a building or place the principal purpose of which is the preparation and serving on retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.
- Take away food and drink premises means premises that are predominately used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

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?

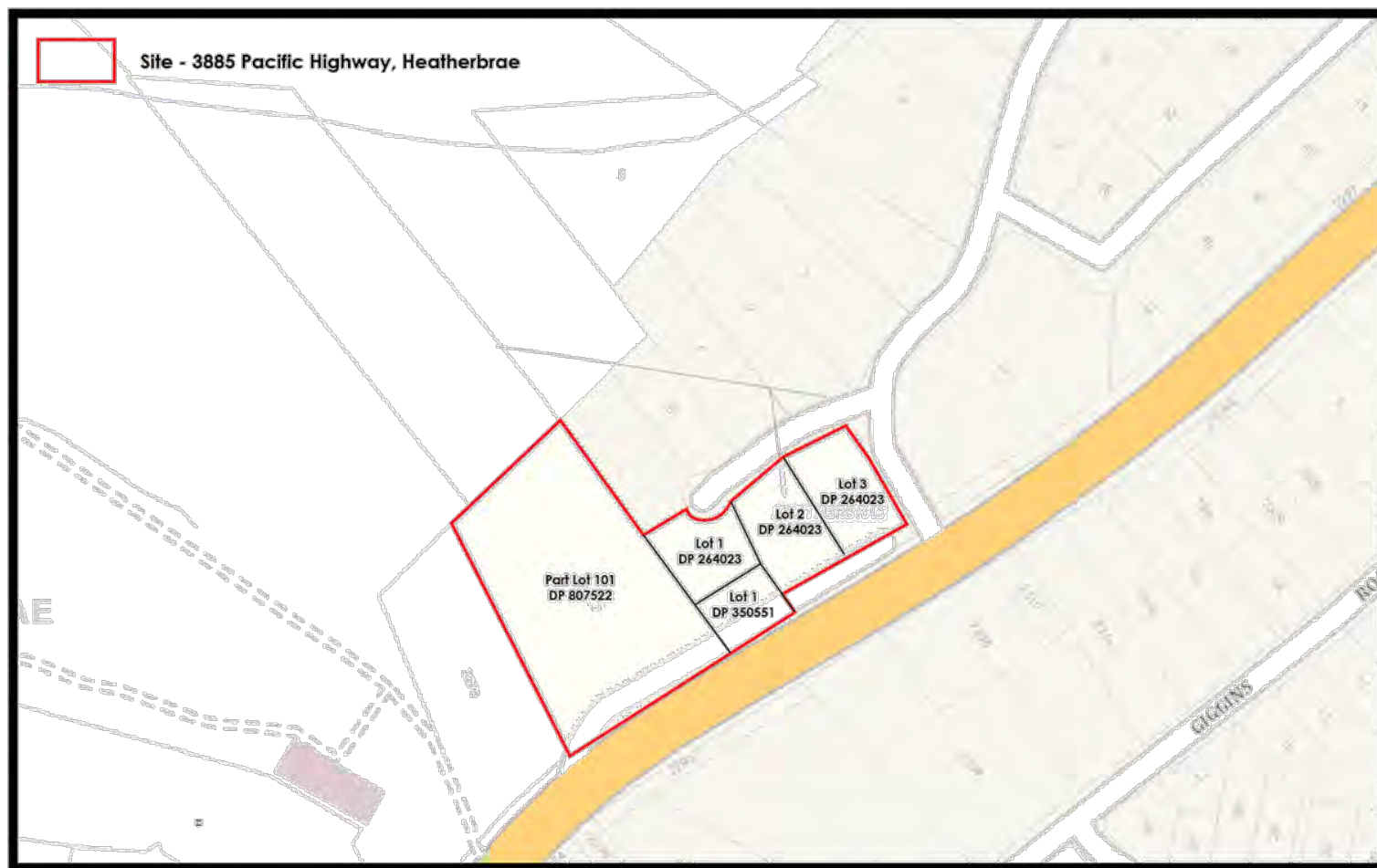
The proposal is not the product of any strategic study or report.

However, it is located on land to which the *Port Stephens Council. 2015, 'Draft Raymond Terrace and Heatherbrae Strategy'* (the Draft Strategy) applies. The Draft Strategy was placed on public exhibition from Thursday, 6 August to Thursday, 3 September 2015. The Draft Strategy does not specifically identify the site, but reinforces the goal for Heatherbrae as a 'key destination for bulky goods'.

FIGURE 1 – AERIAL MAP



FIGURE 2 – CADASTERAL MAP



ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

This goal is in-keeping with the direction provided by the *NSW Government, 2006, 'Lower Hunter Regional Strategy' (LHRS)* and the *Port Stephens Council, 2011, 'Port Stephens Planning Strategy' (PSPS)*.

The proposal is not expected to impact the commercial hierarchy as identified by the *SGS, 2010, 'Commercial and Industrial Lands Study'*. This is given its primary customer base will be Pacific Highway road users.

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

No other means exists to achieve the objectives or intended outcomes.

This planning proposal was required to enable the additional uses on the site. The proposed additional uses are prohibited under the existing RU2 – Rural Landscape zone that applies to the land. The scale of the proposal falls outside the existing-use rights under the *Environmental Planning & Assessment Act 1979 (NSW)* and therefore a planning proposal is required to allow the proposed additional uses.

The approach to use Schedule 1 was deemed as the most appropriate to an alternative zone. The alternative would be a zone B5 – Business Development, which would allow for restricted premises, such as sex shops or a zone, IN1 – General Industrial would allow for sex services premises. These zones were not considered as being appropriate given that this location immediately adjoins land that is zoned R5 – Large Lot Residential.

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 (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The proposal is consistent with the hierarchy employed by the *LHRS*. The subject site is identified as an 'existing urban area', while the opposing side of the Pacific Highway is mapped for 'employment land' for the major regional centre of Raymond Terrace. The proposal will contribute to the 1600 jobs to be accommodated by Raymond Terrace and Heatherbrae under the L.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The proposal is consistent with the strategic direction that is provided by the *Port Stephens Council, 2013, 'Integrated Plans'*, being to 'Balance the environmental, social and economic needs of the Port Stephens for the benefit of present and future generations' and to 'Provide Strategic Land Use Planning Services'.

The proposal is consistent with Council's local strategic plan, being the PSPS, which identifies Heatherbrae as being located within the primary growth corridor. The PSPS identified that the *Port Stephens Council, 2015, 'Draft Raymond Terrace and*

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Heatherbrae Strategy has been discussed as playing a key role in providing further detail to the *PSPS* for the major regional centre of Raymond Terrace, which also incorporates Heatherbrae.

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

There are no existing or draft *State Environmental Planning Policies (SEPPs)* that prohibit or restrict the proposed development as outlined in this planning proposal.

An assessment of the SEPPs against the planning proposal is provided below:

SEPP	Relevance	Consistency and Implications
SEPP 33 – Hazardous & Offensive Development	Provides consideration for the consent of hazardous and offensive development.	Consistent. A service station could be defined as a potentially hazardous industry. A hazard assessment may be required at the development application stage.
SEPP 44 – Koala Habitat Protection	Provides consideration to the protection of koalas and their habitats.	Consistent. The site is identified as 'mainly cleared'. A future development application will demonstrate consistency with the <i>Port Stephens Council, 2011, 'Comprehensive Koala Plan of Management'</i> .
SEPP 55 – Remediation of Land	Provides consideration to suitability based on contamination.	Consistent. A Stage 1 – Contamination Assessment concluded that 'the site is considered suitable for the proposed service station development, providing contingency measures are adopted to address potential contamination if encountered during construction' (p.19)
SEPP 64 – Advertising and Signage	Provides consideration to the compatibility of outdoor signage.	Consistent. All advertising and associated signage will be assessed as part of the development application process.
SEPP – Rural Lands 2008	Provides consideration to the protection of rural lands for rural purposes.	Consistent. The site has 'existing use rights' for a motel. The schedule 1 approach reflects the unique location of the site and the need to tailor a site specific approach. Given the location of this site within an enterprise corridor this site is currently not used for nor will it be used for rural purposes.

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

The proposal's inconsistencies with the Ministerial Directions 1.5 – Rural Lands, 4.1 – Acid Sulfate Soils and 4.3 – Flood Prone Land were identified to be of minor significance by the Gateway Determination (**ATTACHMENT 1**). The Gateway has stated that no further approval is required in relation to these Directions.

An assessment of the Directions against the planning proposal is provided below:

Ministerial Directions	Application	Consistency and Implications
1.2 Rural Zone	This Direction applies when a proposal will affect land within an existing or proposed rural zone.	Consistent. The proposal will increase the density of development that is permissible on site. This is believed to be of minor significance given the current use of the site as a hotel.
1.5 Rural Lands	This Direction applies when the proposal will affect land within an existing rural zone.	Inconsistent. The proposal will affect land within the Zone RU2 – Rural Landscape. The Gateway Determination dated 26/06/15 has considered this to be of minor significance and that no further approval is required.
2.3 Heritage Conservation	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site does not contain any heritage items nor is it situated within a heritage conservation area. The two Morten bay figs that are located on the neighbouring site are listed heritage items. Council's heritage advisor provided preliminary advice that the proposal will not impact on these items.
3.5 Development Near Licensed Aerodromes	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site is located within the Port Stephens Height Trigger Map and in turn requires referral when structures are proposed to be higher than 45m metres. This is a development application requirement and does not demonstrate an inconsistency with this Direction.
4.1 Acid	This Direction	Inconsistent.

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Sulfate Soils	applies because the land has a probability of containing acid sulfate soils.	<p>The site is identified as having a probability of containing Class 4 Acid Sulfate Soils.</p> <p>Clause 7.1 – Acid Sulfate Soils (ASS) allows for development that is proposed on land identified to contain ASS. Pre-lodgement meeting minutes in relation to a future development application has identified the need for an Acid Sulfate Soils and Stormwater Management Plan to be submitted with the development application.</p> <p>The Gateway Determination has considered this to be of minor significance and that no further approval is required.</p>
4.3 Flood Prone Land	This Direction applies to a planning authority that prepares a proposal that affects flood prone land.	<p>Inconsistent.</p> <p>Clause 7.3 – Flood Planning allows for development that is proposed on flood prone land.</p> <p>The proposal does not propose to create, alter or amend a zone or provision that affects flood prone land.</p> <p>The Gateway Determination has considered this to be of minor significance and that no further approval is required.</p>
4.4 Planning for Bushfire Protection	This Direction applies as the land is identified as bushfire prone.	<p>Consistent.</p> <p>The site is identified as bushfire prone land and in turn will be required to satisfy the requirements of the RFS. 2006, 'Planning for Bushfire Protection' at the Development Application stage.</p>
5.1 Implementation of Regional Strategies	This Direction applies to land that is covered by the Lower Hunter Regional Strategy.	<p>Consistent.</p> <p>The proposal is consistent with the objectives of the Lower Hunter Regional Strategy to create 1600 jobs and is consistent with the PSPS and the <i>Port Stephens Council. 2015, 'Draft Raymond Terrace and Heatherbrae Strategy'</i>.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This Direction applies as the site traverses the Pacific Highway and is located in Port Stephens.	<p>Consistent.</p> <p>The proposal has considered access from the Pacific Highway and will not undermine the commercial centre role of Raymond Terrace.</p>

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6.3 Site Specific Provisions	This Direction applies when a relevant planning authority prepares a proposal to allow a specific use to be carried out.	<p>Consistent.</p> <p>The proposal will allow a particular use to be carried out on site.</p> <p>The Gateway identified that 'prior to undertaking community consultation, the proposed site layout drawings should be removed from the planning proposal to ensure consistency with section 117 Direction 6.3 Site Specific Provisions'.</p> <p>The proposal was amended to remove these proposed site layout drawings prior to public exhibition.</p>
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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. There are some isolated trees on site and any proposal for their removal will be addressed at the development application stage.

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

Although there are limited environmental implications given that proposal will enable what is essentially an extension of the existing motel the following should be addressed at the development application stage:

- Potential for noise impacts on motel guests and nearby residents as a result of trucks decelerating and accelerating from a potential service station;
- Contingency measures may be required to address potential contamination if encountered during construction; and
- Potential for tree removal and appropriate compensatory landscaping.

The Gateway Determination required Council to demonstrate that the proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. Council required the applicant to prepare a Stage 1 – Contamination Assessment, which concluded that the site was suitable for the proposed service station development, provided that measures are adopted to address potential contamination if encountered during construction.

The Traffic Impact Assessment (TIA) provided as a part of the planning proposal and updated through subsequent discussions with the RMS has indicated that traffic generated by the additional permitted uses could be managed through the proposed egress arrangements. These arrangements will be formally assessed at the development application stage.

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

11

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

The proposal has been identified as having the potential to have positive economic implications with Regional Economic Modelling and Planning (REMPAN) forecasting 13 jobs and an output of \$685,000.

The proposal will also have a positive social impact by encouraging highway commuters to stop and revive. The applicant has stated that future development will be fitted with lighting and CCTV surveillance technology.

A development application for a 'change of use' from a restaurant to a hotel and associated alterations and additions was lodged and refused by Council in 2011 (DA 2010-487). A court appeal was subsequently dismissed. The group term 'food and drink premises' would allow for a pub and in turn has not been proposed through this amendment. In turn, a pub or small bar continues to be considered as prohibited development at this site.

A summary of reasons for past refusal of this development application included a loss of amenity, traffic and social concerns, which principally related to the impacts of alcohol consumption. A subsequent appeal on the refusal by the proponent to the NSW Land and Environment Court was refused.

The proposal seeks to address previous concerns related to the development application by excluding 'pubs' and 'small bars' as permissible land uses on the site. The proposal limits additional land uses to a 'service station', 'restaurant or café' and 'take-away food premises'. Any liquor served as a part of a restaurant or cade is not anticipated to have the negative social impact of the former proposed development application. Additionally, any alcohol serving components of a new restaurant or café will be assessed and managed at the development application stage and relevant liquor licencing requirements.

SECTION D – State and Commonwealth Interests**10. Is there adequate public infrastructure for the planning proposal?**

The proposal is located in proximity to the major regional centre of Raymond Terrace. It will provide jobs for nearby residents and reinforce the role of Heatherbrae as an employment centre.

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

No concerns were raised in the three submissions received from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS). RMS stated they have no objection to the proposal provided that the following matters are considered by Council:

- The proposed design vehicle must be able to enter and exit from all proposed access points, including Kingston Parade;
- The proposed ingress from and egress to the Pacific Highway, and associated road works shall be designed and constructed in accordance with the *Austrroads. 2010, 'A Guide to Road Design'* and RMS

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

supplements, to the satisfaction of RMS and Council. Provision is to be made for cyclists and pedestrians as necessary;

- All road works shall be undertaken at full cost to the developer, and no cost to RMS or Council; and
- As part of any future development application, RMS shall require the developer to undertake a Traffic Impact Study to identify the likely impacts and subsequent road upgrade requirements, prepared in accordance with the *Roads and Traffic Authority, 2002, 'A Guide to Traffic Generating Developments'* shall also be submitted for review.

It is considered appropriate that these matters be addressed at the development assessment stage.

PART 4 - MAPPING

A Port Stephens Local Environmental Plan 2013 Schedule 1 – Additional Permitted Uses (NSW) Map is included as **(ATTACHMENT 3)**.

PART 5 – DETAILS OF COMMUNITY CONSULTATION

The proposal was exhibited from Thursday, 6 August to Thursday, 10 September 2015 (35 days) during normal business hours at the following locations:

- Council's Administration Building, 116 Pacific Highway, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Port Stephens Council Website <www.portstephens.nsw.gov.au>

No concerns were raised in the three submissions received from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS).

PART 6 – PROJECT TIMELINE

The proposal is to be reported to the Council Meeting of 27 October 2015. Pending Council's resolution to exercise its delegation and make the Plan the proposal will be forwarded to the Parliamentary Counsel to make the plan.

The proposal is following this timeframe:

	FEB 15	JUN 15	AUG 15	OCT 15	NOV 15
<i>Council Report</i>					
<i>Gateway Determination</i>					
<i>Public Exhibition</i>					
<i>Council Report</i>					
<i>Parliamentary Counsel</i>					

ATTACHMENTS

The following attachments are supplementary to this proposal:

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

ATTACHMENT 1: Gateway Determination

ATTACHMENT 2: Agency Submissions

ATTACHMENT 3: Port Stephens Local Environmental Plan 2013 Schedule 1 -
Additional Permitted Uses Map (NSW)

ATTACHMENT 1 – Gateway Determination

ATTACHMENT 2 – Agency Submissions

ATTACHMENT 3: Port Stephens Local Environmental Plan 2013 Schedule 1 – Additional Permitted Uses Map

