



# Administrative Amendment 2023

**Proposed amendment to Port Stephens Local  
Environmental Plan 2013**



**PORT STEPHENS**  
COUNCIL

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## VERSION CONTROL

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Version	Date	Details
1	October 2023	Draft planning proposal
2	November 2023	Updated to remove items in accordance with Council resolution 28 November 2023
3	April 2024	Updated to include minimum lot size provisions for proposed C1 land in accordance with Gateway determination

## ATTACHMENTS

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**ATTACHMENT 1** – Existing and proposed Heritage Map

**ATTACHMENT 2** – NPWS notification of Medowie State Conservation Area

**ATTACHMENT 3** – Existing and proposed Land Zoning Map – Medowie State Conservation Area

**ATTACHMENT 4** – Existing and proposed Lot Size Map – Medowie State Conservation Area

**ATTACHMENT 5** – NPWS notification of Columbey National Park

**ATTACHMENT 6** – Existing and proposed Land Zoning Map – Columbey National Park, Dunns Creek

**ATTACHMENT 7** – Existing and proposed Lot Size Map – Columbey National Park, Dunns Creek

**ATTACHMENT 8** – Existing and proposed Lot Size Map, Heatherbrae

## FILE NUMBERS

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**Council:** 58-2023-2-1  
**Department** PP-2023-2705

## PART 1 – Objectives or intended outcomes

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The planning proposal seeks to make administrative amendments to the *Port Stephens Local Environmental Plan 2013* (LEP) to adopt the special flood considerations clause and update mapping. The planning proposal seeks to achieve the following outcomes:

1. Adopt optional Clause 5.22 Special Flood Considerations
2. Amend Schedule 5 Environmental Heritage to correct the property address and mapping for item I79 Raymond Terrace court house
3. Rezone land at Medowie State Conservation Area and Columbey National Park to C1 National Parks and Nature Reserves
4. Amend the Minimum Lot Size map to align with the Land Zoning Map at Kinross, Estate Heatherbrae (Lot 1401 DP 1272419)

## **PART 2 – Explanation of provisions**

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The intended outcomes of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

### **ITEM 1 – Clause 5.22**

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#### **Proposed Amendment:**

Insert optional Clause 5.22 Special Flood Considerations into the *Port Stephens Local Environmental Plan 2013* and opt into all of the allowable land uses listed in the *Standard Instrument – Principal Local Environmental Plan 2006* including:

- a) boarding houses,
- b) caravan parks,
- c) correctional centres,
- d) early education and care facilities,
- e) eco-tourist facilities,
- f) educational establishments,
- g) emergency services facilities,
- h) group homes,
- i) hazardous industries,
- j) hazardous storage establishments,
- k) hospitals,
- l) hostels,
- m) information and education facilities,
- n) respite day care centres,
- o) seniors housing,
- p) sewerage systems,
- q) tourist and visitor accommodation,
- r) water supply systems.

#### **Explanation:**

Council wishes to insert the optional Clause 5.22 Special Flood Considerations into the LEP to ensure flood risks for sensitive and hazardous development is appropriately considered.

Due to the presence of several large rivers, including the Hunter, Williams, Paterson, Karuah and Tilligerry, much of Port Stephens is flood affected. Consequently, significant portions of residential and employment lands are located between the flood planning area and the probable maximum flood across the LGA.

Adopting the optional clause will allow council to ensure future development in flood prone areas is compatible with the level of risk; avoid accumulative impacts, protect the capacity of emergency responses and avoid adverse effects of hazardous development during flood events.

Council wishes to opt into all allowable land uses listed in the *Standard Instrument – Principal Local Environmental Plan 2006*.

## ITEM 2 – Schedule 5 Environmental Heritage

### Proposed Amendment:

Amend Schedule 5 Environmental Heritage of the *Port Stephens Local Environmental Plan 2013* to:

- Correct the address for item I79 Courthouse; and
- Update Heritage map to reflect the amalgamation of item I79 **ATTACHMENT 1**

**Table 1: Current and proposed address for Item I79**

Current address in LEP	Proposed address
59 William Street, Raymond Terrace Lot 10 Section 11 DP 758871	55 William Street, Raymond Terrace Lot 10 DP 1263525

**Figure 1: Existing and proposed Heritage Map**



### Explanation:

Item I79 of Schedule 5 Environmental Heritage is currently incorrect as it refers to a historical address. In 2020, Lot 10 and Lot 9 Section 11 DP 758871 were subject to a 2 into 2 lot subdivision that moved the boundary of the lot Item I79 resides in.

Council wishes to update Item I79 to reflect the correct address. The Heritage map also requires an amendment to reflect the new lot boundary for Item I79 as displayed in **Figure 1**.

## ITEM 3 – National Parks and Nature Reserves

### Proposed Amendment:

Amend the Port Stephens Local Environmental Plan 2013 to:

- Amend Land Zoning Map to rezone the following sites to C1 National Parks and Nature Reserves (**ATTACHMENT 3** and **ATTACHMENT 6**); and
- Amend Lot Size Map to remove the identification of the sites as 40ha (**ATTACHMENT 4** and **ATTACHMENT 7**).

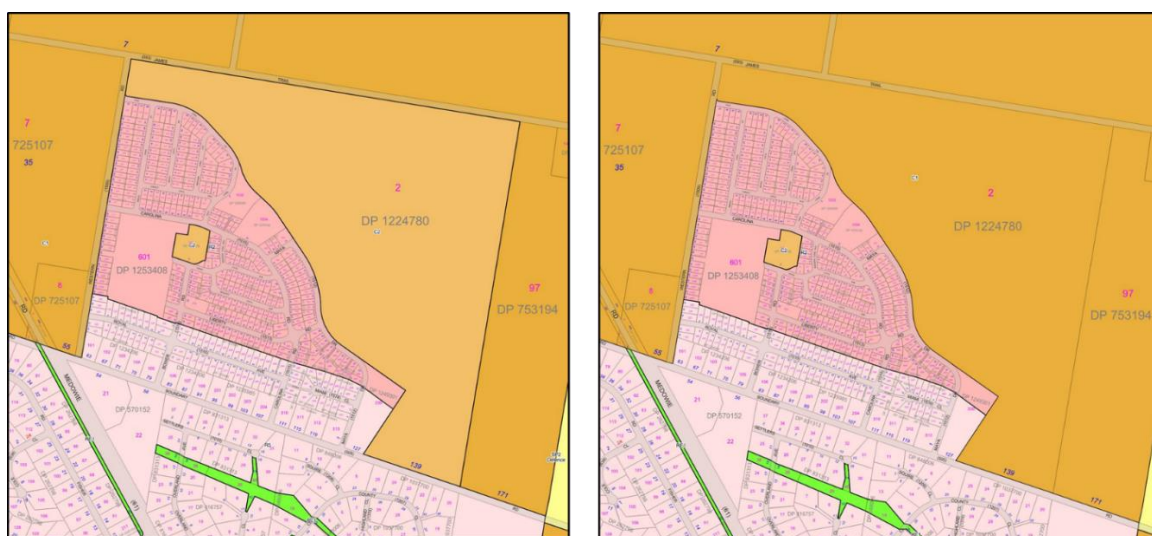
**Table 2: List of sites to be rezoned to C1 National Park and Nature Reserves**

Address	Current Zone	Reservation status
Lot 2 DP 1224780 139 Boundary Road, Medowie	C2 Environmental Conservation	Medowie State Conservation Area
Lot 1 DP 1192418 17 Notts Lane, Glen Oak	RU2 Rural Landscape	Cumbey National Park
Lot 119 DP 752445 716A Duns Creek Road, Duns Creek	C3 Environmental Management	Cumbey National Park
Lot 1 DP 1168926 716B Duns Creek Road, Duns Creek	C3 Environmental Management	Cumbey National Park
Lot 2 DP 1168926 716C Duns Creek, Duns Creek	C3 Environmental Management	Cumbey National Park

**Figures 2 and 3** display the proposed changes to the Land Zoning Map and the Lot size Map at the Medowie State Conservation Area.

**Figures 4 and 5** display the proposed changes to the Land Zoning Map and the Lot size Map at the Cumbey National park.

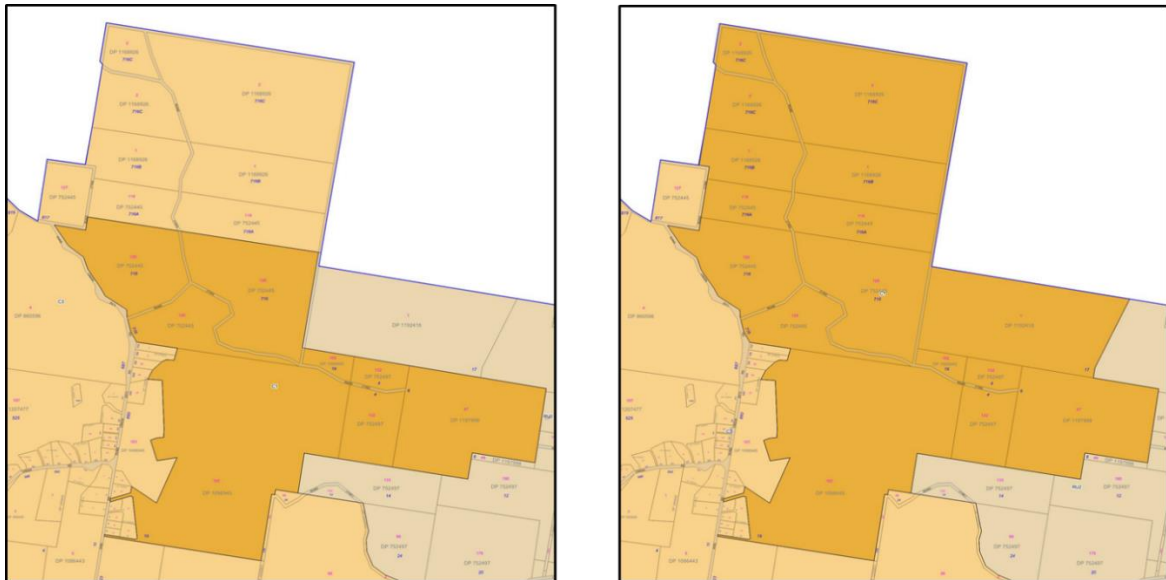
**Figure 2: Existing and proposed Land Zoning Map - Medowie State Conservation Area**



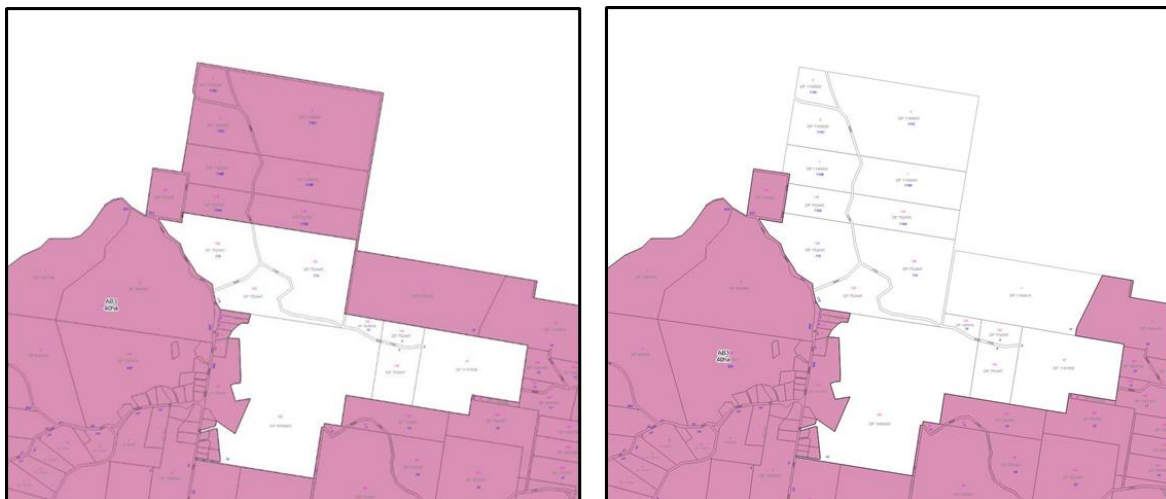
**Figure 3: Existing and proposed Lot Size Map - Medowie State Conservation Area**



**Figure 4: Existing and proposed Land Zoning Map – Columbey National Park**



**Figure 5: Existing and proposed Lot Size Map – Columbey National Park**





## Explanation:

The planning proposal seeks to rezone the land identified in **Table 2** to C1 National parks and Nature Reserves to reflect their reservation under the National Parks and Wildlife Act 1974.

On the 7 November 2022, the National Parks and Wildlife Service (NPWS) wrote to council to notify the reservation of and recommend the rezoning of land at Lot 2 DP 1224780, 139 Boundary Road, Medowie (**ATTACHMENT 2**). On the 4 November 2022, the land was reserved as part of the Medowie State Conservation Area, under the provisions of Section 30A(1)(c) of the *National Parks and Wildlife Act 1974* (NP&W Act). Land reserved under the NP&W Act is zoned C1 National Parks and Nature Reserves.

On the 14 February 2019, the NPWS provided a submission on a previous planning proposal relating to the rezoning of other reserved land. In the submission, the NPWS identified additional land reserved as part of the Columbe National Park with a recommendation to review the zoning (**ATTACHMENT 5**). Land reserved under the NP&W Act is zoned C1 National Parks and Nature Reserves.

Following advice from NPWS, Council proposes to rezone the land identified in **Table 2** to C1 National Parks and Nature Reserves to reflect their reservation (**ATTACHMENT 3** and **ATTACHMENT 6**) and to remove the identification of the land as 40ha minimum lot size (**ATTACHMENT 4** and **ATTACHMENT 7**).

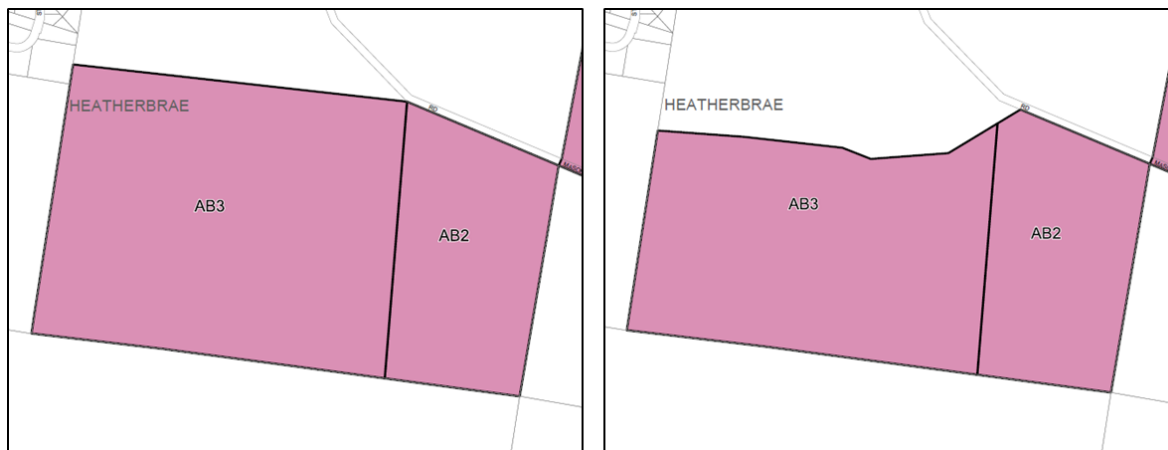
## ITEM 4 – Masonite Road, Heatherbrae

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### Proposed Amendment:

Amend Lot Size Map for Part of Lot 1401 DP 1272419 to remove the identification of part of the site as 20 hectares (**ATTACHMENT 8**).

**Figure 6: Current and proposed Lot size Map at 343 Masonite Road, Heatherbrae**





## Explanation:

The Lot Size Map at 343 Masonite Road, Heatherbrae, Lot 1401 DP 1272419 incorrectly applies a minimum lot size of 20 hectares over land zoned SP2 Classified Road and E4 General Industrial. **Figure 6** displays the misalignment between the land zoning map and lot size map.

**Figure 7: Current Lot Size Map and current Land Zoning Map at 343 Masonite Road, Heatherbrae**



Prior to the digital LEP transition, the above site sat within the PDF Lot Size Map Sheet LSZ\_002C. This map sheet was subject to a previous planning proposal (Amendment No 30) to correct misalignments relating to the Heatherbrae bypass road corridor, zoned SP2 Classified Road.

During the finalisation stage of the planning proposal (Amendment No 30) two sets of mapping were provided. The first set provided on the 1 November 2019, Map B in **Figure 8**, was correct but due to a corrupted file a new suite of maps were provided on the 8 November 2019. The replacement maps however contained an error identified in blue in Map C in **Figure 8**.

**Figure 8: Comparison of the Lot Size Map intended for adoption against endorsed maps.** Map A - Previous Lot Size Map endorsed 17 Jun 2016 to 5 Dec 2019; Map B - Lot Size Map intended for adoption 6 Dec 2019; Map C Incorrect Lot Size Map adopted 6 Dec 2019.



The current misalignment between the Lot Size Map and the Land Zoning Map for Lot 1401 DP 1272419 is causing issues for the subdivision of this industrial land. Council wishes to realign the Lot Size Map with the current Land Zoning Map to correct this error and allow for the practical subdivision of the remaining industrial land (**ATTACHMENT 8**).

### **PART 3 – Justification of strategic merit and site specific merit**

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#### **Strategic merit**

##### **Section A – Need for the planning proposal**

###### **Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

The planning proposal has been prepared to address various errors or matters that have arisen over the past two years. While the planning proposal is not the result of an endorsed LSPS, strategic study or report it will enable outcomes of the LSPS and regional plans relating to managing flood risks and protecting the environment. These are addressed in detail under Questions 3 and 4.

###### **Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The amendments to the LEP as described by this planning proposal are the best means of achieving the stated objectives.

Items 1 is necessary to improve the assessment of sensitive and hazardous development on flood prone land. Items 2 and 3 are required to reflect the land's conservation status. Item 8 is necessary to correct an error.

An amendment to the LEP is the only way to address these matters.

##### **Section B – Relationship to strategic planning framework**

###### **Q3. Will the planning proposal give effect to the objectives and actions of the Hunter Regional Plan and/or Greater Newcastle Metropolitan Plan (or any exhibited draft plans that have been prepared to replace these)?**

The objectives of the Hunter Regional Plan 2041 (HRP) and Greater Newcastle Metropolitan Plan 2036 (GNMP) have limited application to this planning proposal because it seeks to address general administrative matters. However, some items within the planning proposal will give effect to the objectives and actions of the HRP and GNMP which are addressed below.

## Hunter Regional Plan 2041 (HRP)

The planning proposal gives effect to the following objectives and strategies of the HRP:

Strategy	Consistency
<b>Objective 6: Conserve heritage landscapes, environmentally sensitive areas, waterways and drinking water catchments</b>	
Strategy 6.3 Planning proposals will ensure the biodiversity network is protected within an appropriate conservation zone unless an alternate zone is justified following application of the avoid, minimise, offset hierarchy.	Item 3 seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to provide an appropriate level of environmental protection to these lands.
Strategy 6.6 Local strategic planning will ensure all known places, precincts, landscapes and buildings of historic, scientific, cultural, social, archaeological, architectural and aesthetic significance to the region are identified and protected in planning instruments.	Item 2 seeks to correct the property address and mapping for heritage item I79, the Raymond Terrace court house.
Strategy 6.7 Local strategic planning will identify and protect drinking water catchments and storages ensuring that incompatible land uses will not compromise future water security.	Item 1 seeks to insert optional Clause 5.22 Special Flood Considerations into the LEP to require more stringent assessment of hazardous development within the probable maximum flood (PMF). Much of the drinking water catchment in Port Stephens is within the PMF, so the clause will help prevent incompatible development within drinking water catchments.
<b>Objective 7: Reach net zero and increase resilience and sustainable infrastructure</b>	
<p>Strategy 7.7 Local strategic planning will demonstrate alignment with the NSW Government's natural hazard management and risk mitigation policy framework including:</p> <ul style="list-style-type: none"> <li>• Planning for Bushfire Protection 2019</li> <li>• NSW Coastal Management Framework</li> <li>• Floodplain Development Manual and the Flood Prone Land Policy</li> <li>• Planning for a more resilient NSW: A strategic guide to planning for natural hazards</li> <li>• any other natural hazards guidance that is released</li> </ul>	Item 1 seeks to insert optional Clause 5.22 Special Flood Considerations into the LEP to ensure future development in flood prone areas is compatible with the level of risk, avoids accumulative impacts, protects the capacity of emergency responses and avoids adverse effects of hazardous development during flood events.

## Greater Newcastle Metropolitan Plan 2036 (GNMP)

The planning proposal gives effect to the following strategies of the GNMP:

Strategy	Consistency
Strategy 7: Respond to the changing land use needs of the new economy	Item 4 seeks to correct the minimum lot size in an existing industrial area to facilitate new development.
Strategy 12: Enhance the Blue and Green Grid and the urban tree canopy	Item 3 seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to provide an appropriate level of environmental protection to these lands.
Strategy 14: Improve resilience to natural hazards	Item 1 seeks to insert optional clause 5.22 Special Flood Considerations into the LEP to ensure flood risks for sensitive and hazardous development is appropriately considered.

### **Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?**

#### Port Stephens Local Strategic Planning Statement (2020)

The Port Stephens LSPS identifies the 20-year vision for land use in Port Stephens. It sets out social, economic and environmental planning priorities for the future and identifies when they will be delivered.

As the planning proposal is administrative in nature, much of the LSPS is not applicable, however the planning proposal will facilitate an economic outcome as well as environmental outcomes as identified in the table below.

Planning Priority	Consistency
Planning Priority 2: Make business growth easier	Item 4 is consistent with this priority as it seeks to correct the minimum lot size (MLS) in a growing industrial estate in Heatherbrae to facilitate subdivision. Parts of Kinross Estate in Heatherbrae are zoned E4 General Industrial but cannot be subdivided due to a MLS of 20 hectares. Removing the MLS restriction from this land will make business growth easier by permitting the subdivision of this land.
Planning Priority 7: Conserve biodiversity values and corridors	Item 3 is consistent with this priority as it seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to conserve the biodiversity values of these lands and protect corridors.

Planning Priority	Consistency
Planning priority 8: Improve resilience to hazards and climate change	Item 1 is consistent with this priority as it seeks to insert optional clause 5.22 Special Flood Considerations into the LEP to ensure future development in flood prone areas is compatible with the level of risk to improve resilience to future flood events.

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

Due to the administrative nature of this planning proposal, no other State and regional studies or strategies are applicable.

**Q6. Is the planning proposal consistent with applicable SEPPs?**

An assessment of the relevant applicable State Environmental Planning Policies (SEPPs) against the planning proposal is provided in the table below.

SEPP	Consistency and Implications
<b>SEPP (Primary Production) 2021</b>	
<b>Chapter 2 Primary production and rural development</b>	The planning proposal is consistent with this SEPP.
<b>SEPP (Resilience and Hazards) 2021</b>	
<b>Chapter 2 Coastal Management</b>	The planning proposal is consistent with this SEPP.
<b>Chapter 3 Hazardous and Offensive Development</b>	The planning proposal is consistent with this SEPP.
<b>Chapter 4 Remediation of Land</b>	This chapter is not applicable.
<b>SEPP (Transport and Infrastructure) 2021</b>	
<b>Chapter 2 Infrastructure</b>	The planning proposal is consistent with this SEPP.
<b>Chapter 3 Educational Establishments and Child Care Facilities</b>	This Chapter is not applicable.
<b>SEPP (Biodiversity and Conservation) 2021</b>	
<b>Chapter 2 Vegetation in non-rural areas</b>	The planning proposal is consistent with this SEPP.

SEPP	Consistency and Implications
<b>Chapter 3 Koala habitat protection 2020</b>	The planning proposal is consistent with this SEPP.
<b>Chapter 4 Koala habitat protection 2021</b>	The planning proposal is consistent with this SEPP.

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

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

Ministerial Direction	Consistency and Implications
<b>1. PLANNING SYSTEMS</b>	
<b>1.1 Implementation of Regional Plans</b>	Consistent. The planning proposal is consistent with the relevant directions of the HRP as demonstrated under Question 3.
<b>1.3 Approval and Referral Requirements</b>	Consistent. The planning proposal would not require any additional concurrences or referrals requirements. The proposed amendments will improve the assessment of development.
<b>3. BIODIVERSITY AND CONSERVATION</b>	
<b>3.1 Conservation Zones</b>	Consistent. The planning proposal seeks to rezone land currently zoned RU2 Rural landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Natures Reserves, which offers a higher level of protection (Item 3).
<b>3.2 Heritage Conservation</b>	Consistent. The planning proposal seeks to correct the address and mapping of heritage item I79, Raymond terrace Court House (Item 2).
<b>4. RESILIENCE AND HAZARDS</b>	
<b>4.1 Flooding</b>	Consistent. The planning proposal seeks to improve the assessment of development in flood prone land by adopting the optional Clause 5.22 Special Flood Considerations (Item 1).

Ministerial Direction	Consistency and Implications
<b>4.2 Coastal Management</b>	Consistent. The planning proposal seeks to improve the assessment of development in flood prone coastal areas by adopting the optional Clause 5.22 Special Flood Considerations (Item 1).
<b>4.3 Planning for Bushfire Protection</b>	Consistent. The planning proposal will not affect land mapped as bushfire prone.
<b>7: INDUSTRY AND EMPLOYMENT</b>	
<b>7.1 Employment Zones</b>	Consistent. The planning proposal is consistent with this direction as it seeks to facilitate subdivision and development of an existing E4 General Industrial zone (Item 4).
<b>9. PRIMARY PRODUCTION</b>	
<b>9.1 Rural Zones</b>	Consistent. The planning proposal does not seek to rezone rural land to a residential, employment, mixed use, SP4 Enterprise, SP5 Metropolitan Centre, W4 Working Waterfront, village or tourist zone.
<b>9.2 Rural Lands</b>	Consistent. The planning proposal seeks to rezone rural land to C1 National Parks and Wildlife to identify and protect environmental values. The Minimum Lot Size is not proposed to change.

### **Site-specific merit**

## **Section C – Environmental, social and economic impact**

**Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

Item 3 of the planning proposal seeks to rezone land currently zoned RU2 Rural landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Natures Reserves, to reflect their reservation under the *National parks and Wildlife Act 1974*.

No other items in the planning proposal relate to critical habitat or threatened species, populations or ecological communities or their habitats and the proposed amendments are unlikely to adversely impact on them.



**Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No. There are no other likely environmental effects as a result of this planning proposal due to the administrative nature of the changes.

**Q10. Has the planning proposal adequately addressed any social and economic effects?**

The proposed amendments are considered to result in positive social outcomes for the community. The planning proposal will address errors and remove minor anomalies in the LEP. The proposed amendments will increase opportunities for industrial development in Heatherbrae, improve biodiversity outcomes in Dunns Creek, Glen Oak and Medowie and restrict sensitive and hazardous development from occurring on flood prone land.

**Section D – Infrastructure (Local, State and Commonwealth)**

**Q11. Is there adequate public infrastructure for the planning proposal?**

The planning proposal unlikely to have any impacts on infrastructure provision. The proposed amendments are unlikely to generate the need for significant public infrastructure.

**Section E – State and Commonwealth Interests**

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

Consultation with relevant State and Commonwealth agencies can be undertaken following a Gateway Determination.

**PART 4 – Mapping**

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The proposed map amendments are included as attachments to the planning proposal as follows:

- Item 2 - Existing and Proposed Heritage Maps in Raymond Terrace **ATTACHMENT 1**
- Item 7 - Existing and Proposed Land Zoning Maps in Medowie State Conservation Area **ATTACHMENT 3**
- Item 7 - Existing and Proposed Land Zoning Maps in Columbey National Park **ATTACHMENT 5**
- Item 8 - Existing and Proposed Lot size Maps in Heatherbrae **ATTACHMENT 6**

## **PART 5 – Community consultation**

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Community consultation will be undertaken in accordance with the Gateway determination.

Notice of the public exhibition period will be placed on Council's website. The exhibition material will be on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Tomaree Library, Town Centre Circuit, Salamander Bay
- Medowie Community Centre, Cnr of Medowie and Ferodale Streets, Medowie

The planning proposal will also be available on Council's website.

## **PART 6 – Project timeline**

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Should the planning proposal receive a Gateway determination, it is expected to be reported to Council following the completion of the public exhibition period. The following timetable is proposed:

	<b>Feb 2024</b>	<b>Mar 2024</b>	<b>Apr 2024</b>	<b>May 2024</b>	<b>Jun 2024</b>	<b>Jul 2024</b>	<b>Aug 2024</b>	<b>Sep 2024</b>
<b><i>Gateway Determination</i></b>								
<b><i>Public Exhibition</i></b>								
<b><i>Consider submissions</i></b>								
<b><i>Council Report</i></b>								
<b><i>Parliamentary Counsel</i></b>								