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Plan finalisation report – PP_2020_CAMP_003_00 / PP-2020-3129

Campbelltown LEP 2015 (Amendment No. 26)
Menangle Park Urban Release Area

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Campbelltown Local Environmental Plan 2015 (Amendment No. 26).

The planning proposal (**Attachment A**) seeks to amend the *Campbelltown Local Environmental Plan 2015* (Campbelltown LEP 2015) to amend zoning and development standards across the Menangle Park Urban Release Area (MPURA), excluding the existing Menangle Park Village.

In summary, the planning proposal will increase residential density and diversity, relocate the town centre, increase the provision of open space and protect environmentally sensitive areas.

The planning proposal will support the delivery of approximately 4,000 dwellings, an increase of approximately 1,000 dwellings from when the MPURA was rezoned in November 2017.

1.1.2 Site description

Table 1 Site description

| | |
|------------------|--|
| Site Description | Menangle Park Urban Release Area (MPURA) as shown in Figure 1 . |
| Type | Area |
| Council | Campbelltown City Council |
| LGA | Campbelltown |

The planning proposal applies to the MPURA but excludes the existing Menangle Park Village which is under separate and fragmented ownership. The site is approximately 507 hectares and comprises 42 allotments of varying sizes.

A table listing the legal description and street address of the 42 allotments is at **Attachment F**.

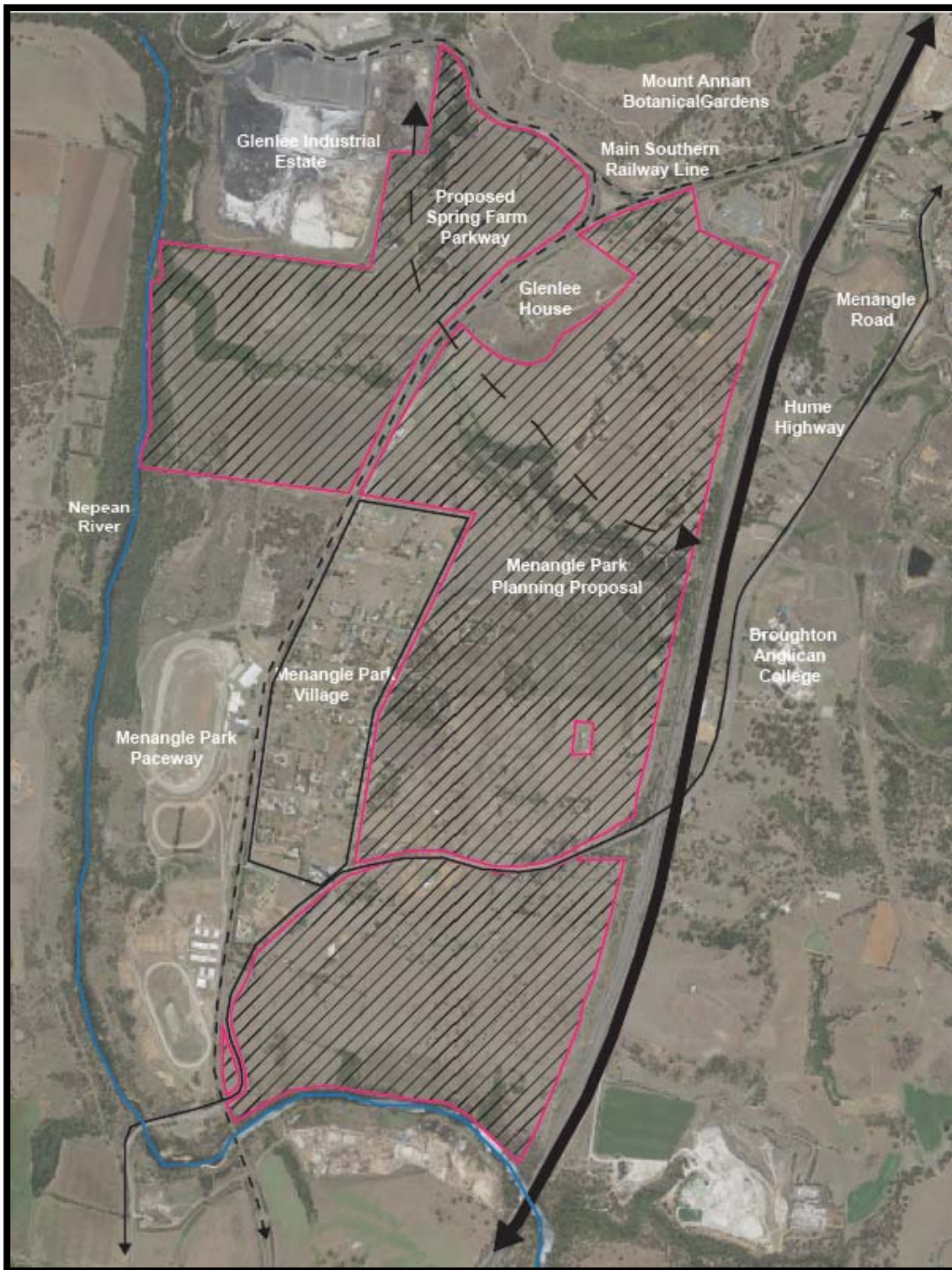


Figure 1 Subject site outlined in pink (source: Gateway Determination Report (October 2020))

1.1.3 Purpose of plan

The intent of the planning proposal (**Attachment A**) is to:

- provide an additional 1,000 dwellings, through a mix of residential densities, lot sizes and dwelling types

- relocate the town centre and introduce two new neighbourhood centres (one in the north of the town centre and one in the south) and a two-hectare primary school
- revise the road and street network to improve permeability throughout the site, this includes a new north-south green active transport link
- increase protection and conservation of environmentally sensitive areas
- increase open space.

The planning proposal seeks to amend the Campbelltown LEP 2015, as follows:

- Amend the land use zones to:
 - relocate the town centre and introduce a new neighbourhood centre to adjoin a new planned primary school
 - increase the area zoned R3 Medium Density Residential
 - introduce R4 High Density Residential zone
 - replace RU2 Rural Landscape areas with C4 Environmental Living
 - increase the provision of land zoned RE1 Public Recreation
 - increase the protection of critically endangered Elderslie Banksia Scrub by applying an C2 Environmental Conservation zone.
- Amend development standards relating to minimum lot size, building height, floor space ratio, and subdivision requirements for certain forms of development to:
 - remove and reduce various minimum lot size standards
 - permit subdivision of R2 Low Density land smaller than the minimum lot size subject to meeting specified criteria.
 - remove floor space ratio (FSR) standards
 - increase height of building standards
 - establish a maximum gross floor area (GFA) of 23,000 sqm for retail development in the Menangle Park Town Centre.
- Amend the Land Reservation Acquisition provisions to reflect zoning changes.

Table 2 below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

| Control | Current | Proposed |
|---------|---|---|
| Zone | IN1 General Industrial, RU2 Rural Landscape, RE1 Public Recreation, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, B2 Local Centre, SP2 Infrastructure | IN1 General Industrial, RU2 Rural Landscape, RE1 Public Recreation, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, B2 Local Centre, SP2 Infrastructure, R4 High Density Residential, B1 Neighbourhood Centre, C4 Environmental Living, C2 Environmental Conservation |

| Control | Current | Proposed |
|--------------------------------|---|--|
| Maximum height of the building | I: 8.5m O: 15m | I: 8.5m (reduced extent) J: 9m (R2 zone) M: 12m (R3 zone) O: 15m (B1 zone) P: 18m (R4/B2 zone) S: 24m (R4 zone) |
| Floor space ratio | R2 zone 0.55:1 R3 zone 0.55:1 No FSR standard applies to the B2, R5 and RU2 zones | No FSR control on any of the subject land. |
| Minimum lot size | R2 Zone 420m ² R3 Zone 300m ² R5 Zone 950 and 2,000m ² RU2 Zone 3ha | R3 Zone NA R4 Zone NA R5 Zone 750m ² C4 Zone 4,000m ² The proposal also seeks create 'Area 3' and 'Area 4' on the minimum lot size map, each linked to a development standard clause. The clause provides different lot size controls for different residential development types. |
| Number of dwellings | 3,000 | 4,000 |

The proposal also seeks to make the following clause changes:

- amend the existing Clause 4.4 *Floor Space Ratio* (2A) to:
 - exclude its application for areas shown on the Urban Release Area Map (including but not limited to the subject site of this proposal).
- introduce additional new clause in Part 4 Principal Development Standards for *Minimum lot sizes for dwelling houses, semi-detached dwellings, attached dwellings, dual occupancy and multi-dwelling housing in Menangle Park* to:
 - define different minimum lot sizes for different forms of medium density development in the R3 zone,
 - permit subdivision of R2 land that does not meet the minimum lot size if specified criteria are met.
- introduce additional clause in Part 7 Additional Local Provisions to:
 - define a maximum GFA of 23,000 sqm for retail development in the Menangle Park Town Centre.

1.1.4 State electorate and local member

The site falls within the Campbelltown state electorate. Greg Warren MP is the State Member.

The site falls within the Macarthur federal electorate. Michael Freeland MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 21 October 2020 (**Attachment B**) determined that the proposal should proceed subject to conditions, including a condition requiring commercial FSR is addressed as follows:

1(i) – Prior to public exhibition, the planning proposal is to be amended as follows... Council is to propose a floor space ratio for the land zoned B1 Neighbourhood Centre and B2 Local Centre zoned land and include this in the public exhibition material.

Council has proposed a gross floor area control instead of a floor space ratio control for the relevant land. The department is satisfied that this meets the objective of the Gateway requirement. See department assessment in **section 4.1** of this report.

The Gateway determination was altered on 19 April 2021 (**Attachment C**) to:

- extend the timeframe for completion
- prescribe a timeframe for exhibition
- remove two conditions.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised by the end of April 2022. On the 22 March 2022 Council formally submitted the planning proposal to the department for finalisation.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 29 August 2021 to 27 September 2021.

A total of eight community submissions were received, including seven objections (**Attachment G**).

3.1 Submissions during exhibition

There were eight submissions received from individuals and organisations, including National Parks Association NSW Inc and Space Urban.

Of the individual submissions seven objected to the proposal and one was a request for information.

The issues raised in submissions, Council's responses and the department's comments are summarised in **Table 3** below.

Table 3 Issues raised in submissions

| Issue | Council's response and Department assessment of adequacy |
|--|---|
| <p>Development controls are inconsistent with controls applying to nearby sites and favour Dahua land.</p> <p>Exclusion of nearby lots limits opportunity to implement place-based outcome.</p> <p>Requests to expand application to other nearby land holdings.</p> | <p><u>Council Response:</u></p> <p>The planning proposal generally only seeks to amend planning controls for holdings under the proponent's control. Should the owner(s) of nearby properties want to amend planning controls for their land holdings, Council would be open for them to submit a Planning Proposal Request.</p> <p>Also note that Dahua land is still subject to the Menangle Park Development Control Plan (DCP) and development activities will still be subject to merit assessment at the development application stage.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| <p>Land near the recreation zone has been sterilized.</p> | <p><u>Council Response:</u></p> <p>The sliver of urban land between the proposed park and local street may be investigated at the development application stage, with more detailed design to identify the land area for future acquisition by Council.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| <p>Remaining RU2 Rural Landscape Land should not be rezoned to C4 Environmental Living.</p> | <p><u>Council Response:</u></p> <p>The proposed rezoning of RU2 land to C4 provides a more appropriate transition to urban land. Any future development activity would be subject to further assessment.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| <p>Objection to increase in dwelling numbers from R3 Medium Density Housing zoning and 12m building height.</p> | <p><u>Council Response:</u></p> <p>The expanded R3 zone provides housing diversity in locations that have good access to services, education or public open space.</p> <p>The 12m building height is proposed to provide design flexibility on sloping site. Any proposal exceeding 2 storeys would need to submit a Clause 4.6 application and be assessed on merit.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |

| Issue | Council's response and Department assessment of adequacy |
|--|--|
| <p>Future development on the site would be incompatible with flood risks.</p> | <p><u>Council Response:</u></p> <p>The planning proposal is supported by a Water Cycle Management Report. The report found that filling would ensure all habitable areas and internal roadways are elevated above the 100-year Average Recurrence Interval flood. In the case of major riverine flooding, areas below the probable maximum flood line would have access to evacuation routes.</p> <p><u>Department Response:</u></p> <p>The department is satisfied that Council's response to the issue raised is adequate. It is noted that the former Environment, Energy and Science Group (EES, now known as Environment and Heritage Group EH) made a submission raising issues relating to flooding (October 2021) which were also addressed by Council and are discussed in section 3.2 below. The department's assessment of flood related requirements is contained in section 4.1 of this report.</p> |
| <p>Recommendation to extend the koala corridor along the Nepean River frontage.</p> | <p><u>Council Response:</u></p> <p>The extension of the Koala corridor would be inconsistent with the adopted position of Government. Further, wildlife corridors that end with no connection to other habitat can be a considerable risk.</p> <p><u>Department Response:</u></p> <p>The Office of the NSW Chief Scientist and Engineer (OCSE) in its 'Advice on the protection of the Campbelltown Koala population – April 2020 report, noted maintaining connectivity of habitat helps to avoid the creation of dead ends, in which koalas may face threats without escape routes. Therefore, the department considers Council's response to be adequate.</p> |
| <p>The land ownership diagram and consultation history are misleading or inaccurate.</p> | <p><u>Council Response:</u></p> <p>The planning proposal does not have a land ownership diagram, but rather a diagram of the land to which the planning proposal applies.</p> <p>Council's records show that the submitter was notified of the public exhibition and that the proponent held a "Drop-in" Session for residents prior to lodgement of the planning proposal.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |

| Issue | Council's response and Department assessment of adequacy |
|---|---|
| <p>Objection to the proposed dual occupancy lot size of 700sqm.</p> | <p><u>Council Response:</u></p> <p>This is not part of the planning proposal. The proposal seeks to amend the Lot Size Map for Dual Occupancy Development from 700sqm to 500sqm for the subject land. This is consistent with R3 Medium Density Zone lot sizes.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| <p>Draft zoning maps incorrectly identify the Glenlee Precinct Land with a rural zoning.</p> | <p><u>Council Response:</u></p> <p>Noted. Addressed in post-exhibition amendments.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| <p>The planning proposal fails to address a commitment to the delivery of a fully functional Spring Farm Parkway.</p> <p>The acquisition authority should be resolved as part of the planning proposal.</p> | <p><u>Council Response:</u></p> <p>The Spring Farm Parkway Stage 2 corridor is mapped part SP2 Future Road Corridor and part SP2 Local Road.</p> <p>Neither Transport for NSW (TfNSW) or Council has accepted the role of relevant acquisition authority. Given Stage 2 of Spring Farm Parkway extension is still in the Strategic Assessment Phase and the final corridor has not been confirmed, final consideration of this matter should be deferred until further detail is available.</p> <p><u>Department Response:</u></p> <p>Further discussions were held between Council, the proponent, TfNSW and the department post exhibition. TfNSW has been identified as the acquisition authority for the road corridor in accordance with the existing Transport Infrastructure Contribution (TIC) Deed. The department notes TfNSW's comment that Spring Farm Parkway 2 is currently unconfirmed and unfunded and that there is no guarantee for TfNSW delivery. The department considers this matter to be appropriately resolved. See section 4.1 of this report for further discussion of transport matters.</p> |
| <p>There is no evidence that a Local Voluntary Planning Agreement was exhibited, or amendment to the State Voluntary Planning Agreement.</p> | <p><u>Council Response:</u></p> <p>The amended Gateway Determination issued on 19 April 2021, deleted condition 3 that required the Local Voluntary Planning Agreement to be concurrently exhibited.</p> <p>Although Dahua has offered to enter into a Voluntary Planning Agreement, the full scope of this agreement is still under review and would not be fully known until an amendment to the Menangle Park Contributions Plan 2020 has been made and endorsed by the Independent Pricing and Regulatory Tribunal.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in **Table 4** who have provided the following feedback.

Table 3 Advice from public authorities

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|---------------------------|--|--|
| NSW Rural Fire Service | No concern raised subject to future subdivision being assessed under 100B of the <i>Rural Fires Act 1997</i> and being demonstrated to comply with Section 5, 6 and 8.2.2 of Planning for Bush fire Protection 2019 as applicable. | <p><u>Council Response:</u></p> <p>Noted, no action required.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| Transport for NSW (TfNSW) | The points raised in the submission received from TfNSW relate to dwelling yield, traffic modelling and a requirement that Dahua also enter into a State Voluntary Planning Agreement for Stage 2 of the Spring Farm Parkway. | <p><u>Council Response:</u></p> <p>In 2019, Dahua executed a Deed and State Voluntary Planning Agreement to provide regional contributions up front totalling \$113 million based on traffic modelling for up to 4,525 dwellings. Dahua's Planning Proposal supports up to 4,000 dwellings and is therefore consistent with total forecast growth of 4,500 dwellings for the entire MPURA. Further detailed planning for traffic facilities would occur at the development application stage in consultation with TfNSW.</p> <p>Contributions towards Stage 2 of the Spring Farm Parkway would be made by other developers and would ultimately form part of the NSW Government's reform package in relation to Regional Contributions.</p> <p>Further meetings were held with TfNSW on 17 February 2022 and 22 February 2022 to address in detail, their comments, and Council's responses. The outcome from these meetings was that the transport modelling assumptions for the planning proposal and future land requirements for Stage 1 of the Spring Farm Parkway and new signalised intersection on Menangle Road would be capable of accommodation at the development application stage.</p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|--|--|--|
| | | <p><u>Department Response:</u></p> <p>The department is satisfied that the issues raised by TfNSW relevant to the planning proposal have been adequately addressed and that the remaining transport considerations can be suitably addressed at the development application stage. It is noted that TfNSW will consult with the proponent as the Spring Farm Parkway Stage 2 progresses.</p> <p>TfNSW has been identified as the acquisition authority for the road corridor in accordance with the existing TIC Deed. The Department notes TfNSW's comment that Spring Farm Parkway Stage 2 is currently unconfirmed and unfunded and that delivery by TfNSW is not guaranteed.</p> |
| Former Environment, Energy and Science Group (EES now Environment and Heritage EH) | <p>(1) Elderslie Banksia Scrub Forest (ESBF)</p> <p>Concern about the proposed removal of several patches of (ESBF) and impact on the viability of the remaining EBSF remnants. Concern about the size and zoning of the protective buffer.</p> <p>Request for spine road realignment to retain a larger ESBF patch and expanded buffer area of at least 30m which is zoned C2.</p> <p>(2) Shale Hills Woodland (SHW)</p> <p>Concern about the proposed loss of 2 large patches of Shale Hills Woodland (SHW). These patches provide significant habitat, including to 3 threatened bird species. The patches are mapped as Potential Koala Habitat.</p> <p>(3) RE1 zoning for endangered ecological communities</p> <p>Concern that remnant endangered ecological communities proposed for RE1 zoning will not be retained in the long term. Requested that these remnants be zoned C2 and that a buffer is provided to any other uses, including active recreation.</p> <p>(4) Biodiversity Assessment, Addendum to Biodiversity</p> | <p><u>Council Response:</u></p> <p>(1) Elderslie Banksia Scrub Forest (ESBF)</p> <p>The proponent altered the proposal to expand the Park K conservation area and provide a 30m buffer which is zoned RE1. A precinct-wide Vegetation Management Plan (VMP) will identify long-term commitments with regard to upkeep and conservation of native vegetation communities in a manner that is satisfactory to approval authorities.</p> <p>ESBF patches within the Town Centre are not suitable for retention due to hydrocarbon and asbestos contamination, significant modification, or isolation. The spine road cannot be realigned due to other constraints.</p> <p>(2) Shale Hills Woodland (SHW)</p> <p>Retention of the SHW patches would have significant design implications for both the current and proposed structure plans, especially on the proposed public school location which is part of an existing signed State VPA. It is not feasible to rezone these patches RE1 or C2. Offsets will be appropriately assessed under future development applications.</p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|--------|--|---|
| | <p>Assessment and Vegetation Assessment Report</p> <p>Detailed comments on the Biodiversity Assessment, Addendum to Biodiversity Assessment and the Vegetation Assessment report, generally relating to methodology and reporting, the significance and viability of identified habitats, and the proposed protection measures and management of conservation areas.</p> <p>(5) Flooding</p> <p>Submission (October 2021) sought clarification of the fill strategy, updates to address the new Ministerial Direction and for the report to address differentiated impacts of development and the interchange.</p> <p>In January 2022, EH reviewed additional response provided by Council/Proponent and generally found it adequate. EH recommends the DCP be updated, that future submissions for filling approval account for the potentially unavoidable flood implications of the Hume Highway interchange and that flood impacts of development be documented and maintained to an insignificant or tolerable level.</p> | <p>Ongoing fauna surveys have found that the SHW patches are not optimal habitat for the 3 endangered bird species and that no koalas have been found. Implementation of the VMP will include extensive replanting of koala feed trees.</p> <p>(3) Use of RE1 zoning for endangered ecological communities</p> <p>The rezoning of RE1 lands across the southern part of the precinct to C2 would provide undesirable additional constraints on active recreation and open space. Council intends to address EH concerns in the VMP.</p> <p>(4) Biodiversity Assessment, Addendum to Biodiversity Assessment and Vegetation Assessment Report</p> <p>Council highlighted the sections of the documents which addressed EH's concerns and emphasised that further vegetation surveys on the site are ongoing and that the planning proposal exhibits a better conservation outcome than the current zoning.</p> <p>(5) Flooding</p> <p>In relation to residential interfaces to low-lying flood prone lands in the southern part of the precinct interfacing with the Nepean River, the planning proposal rezones RU2 zoned land with 21.4 ha of C4 Environmental Living land, with a proposed minimum lot size of 4,000 m². This will result in a minor increase of approximately 40-50 residential dwellings in identified flood prone land.</p> <p>All roads, residential lots or building footprints for environmental living lots will be filled above the 1% AEP level. This is the scenario that has been modelled in the CSS report. The modelling identified localised flood increases but no increases outside the MPURA.</p> <p>The planning proposal facilitates in increase of 40-50 dwellings in identified flood prone land. This small increase will not require significant government spending on emergency management</p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|---------------------------------|--|---|
| | | <p>services or response measures, beyond that which is already required for this area.</p> <p>The modelling has considered both residential lot filling and the proposed interchange and Spring Farm Parkway designs currently available. This modelling has found there is potential for an increased 1% AEP level on the eastern side of the intersection and compensatory storage should be considered by TfNSW as part of the on-ramp design.</p> <p><u>Department Response</u></p> <p>(1) – (4)</p> <p>The department is satisfied that Council has adequately responded the advice raised by EH. The buffers to conservation areas have been expanded where feasible to do so and remaining matters can be addressed at the subdivision/development application stage, or via the Menangle Park DCP.</p> <p>(5) Flooding</p> <p>The department is satisfied that Council has responded to the matters raised by EH. The department notes that the DCP requires all buildings to be located above the Flood Planning Level (which is 300 – 50mm above the 1% AEP flood level). See section 4.1 of this report for further department assessment relating to flooding.</p> |
| NSW State Environmental Service | <p>An error in the Gateway determination required Council to consult with the NSW State Environmental Service, rather than the NSW State Emergency Service (SES). As a result of this error the NSW SES was not consulted on the planning proposal.</p> <p>The department has reached out to the NSW SES for comment. SES comments on the proposal are related to the Ministerial directions, including Flood Prone Land:</p> <ul style="list-style-type: none"> • Zoning should not enable development that will result in an increase in risk to life, health | <p><u>Council Response:</u></p> <p>N/A (This was a late submission provided after Council had submitted the proposal for finalisation.) The SES comments have been provided to Council for its information.</p> <p><u>Department Response:</u></p> <p>The department notes the comments raised by the SES in its comments, including that consideration of all flood events rather than focusing on the 1%AEP event. SES concerns are addressed in section 4.1 of this report.</p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|--------|--|--|
| | <p>or property of people living on the floodplain</p> <ul style="list-style-type: none"> • Risk assessment should consider the full range of flooding, including events up to the Probable Maximum Flood (PMF) and not focus only on the 1% AEP flood • Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes • In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES's principles for evacuation • Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community • Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation • Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES • The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management. | |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|---------------------|--|--|
| Sydney Water | <p>Sydney Water have no objections to the proposal. Sydney Water's current infrastructure planning for water and wastewater is aligned with this planning proposal.</p> <p>Sydney Water requests an update of ultimate and annual dwelling and job forecasts from the proposal to ensure staging of services occurs concomitantly.</p> | <p><u>Council Response:</u></p> <p>Ongoing discussions have and will continue to occur as development applications progress for the subject site.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| Water NSW | <p>The submission advises that Water NSW own access road (Lots 26 and 27 DP 249530) in the north of the MPURA and west of the Hume Highway. The access road runs off Glenlee Road and provides operational access to the Canal. The access road is currently zoned SP2.</p> <p>Water NSW require that any future residential subdivision of adjoining land is accessed only from new internal roads and is not to rely on the Water NSW access road.</p> | <p><u>Council Response:</u></p> <p>All future residential development would be accessed from new internal road and would not rely on access to land owned by Water NSW.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| Subsidence Advisory | <p>The submission advises that the MPURA is located within a mining exploration lease held by South 32 Illawarra Metallurgical Coal (IMC).</p> <p>Advice received from IMC indicates that they intend to carry out future mining activity in the area. Associated mine subsidence ground movements would be comparable with those outlined in Subsidence Advisory's Surface Development Guideline 5 and that the timeframe for coal extraction would be beyond 20 years.</p> <p>The submission notes that buildings of the scale and magnitude allowable under the planning proposal would be unable to accommodate the subsidence impacts that would occur beneath the site should mining be completed.</p> | <p><u>Council Response:</u></p> <p>All subdivision and development proposals within the MPURA require concurrence of NSW Subsidence Advisory in accordance with the <i>Coal Mine Subsidence Compensation Act 2017</i>.</p> <p><u>Department Response:</u></p> <p>The department notes that the concurrence of the Subsidence Advisory is required at the DA stage for any development on the land, in accordance with the <i>Coal Mine Subsidence Compensation Act 2017</i>.</p> <p>Additionally, it is noted that the planning proposal seeks to reconfigure existing land use zones on the subject site but does not seek to substantially alter the nature of the land uses.</p> <p>The department considers Council's response to be adequate.</p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|--|--|--|
| Environment Protection Authority (EPA) | <p>The EPA submission addresses the following issues:</p> <ul style="list-style-type: none"> - Implementation of controls to assist in the improvement of air quality - Setbacks for certain development near roads and railways to mitigate noise and air pollution - Consideration should be given to include controls to mitigate and manage impacts of wood heaters - Consideration should be given to strategically position and plan to limit the impact of noise - Protection of waterways and water sensitive urban design features should be included - Contaminated land management controls and assessment - Controls should be adopted for former coal seam gas infrastructure sites and - Controls to incorporate waste and resource recovery considerations. | <p><u>Council Response:</u></p> <p>The submission raises issues that would be appropriately addressed within the Menangle Park DCP. Should Council support finalisation of the Planning Proposal, an amendment to Volume 2, Part 8A – Menangle Park DCP would be progressed.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| Always Powering Ahead (APA) | <p>Submission relates to the natural gas infrastructure 'high pressure transmission pipeline' which extends from Sydney to Moomba and runs through the MPURA. APA does not raise concern and recommends the inclusion of DCP controls relating to use of the easement space as linear open space with landscaping. The submission also recommends a Safety Management Study is undertaken before any future development located within close proximity to the pipeline.</p> | <p><u>Council Response:</u></p> <p>DCP controls in relation to the pipeline are under preparation. The pipeline is located within the existing SP2 Special Uses corridor in proximity to the Water Canal and would be the subject of further consultation with the APA for each relevant development application. This would require an applicant within 200 m of the pipeline to undertake a safety management study.</p> <p><u>Department Response:</u></p> <p>The department considers Council's response to be adequate.</p> |
| Endeavour Energy | <p>Submission does not raise concern to the planning proposal and outlines the process for applicants to seek advice on the supply of electricity infrastructure.</p> | <p><u>Council Response:</u></p> <p>Electrical servicing of Menangle Park is outlined within Endeavour Energy's Growth Servicing Plan. No further action required.</p> <p><u>Department Response:</u></p> |

| Agency | Summary of advice raised | Council response and department assessment of adequacy of response |
|--------|---|--|
| | | The department considers Council's response to be adequate. |
| Jemena | Jemena have no objections to the proposal. Jemena operate low to medium pressure gas mains in the vicinity and that the proposed amendments will not impact their operation and management. | <p><u>Council Response:</u></p> <p>N/A (This was a late submission provided after Council had submitted the proposal for finalisation.)</p> <p><u>Department Response:</u></p> <p>Noted. No action required.</p> |

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 8 March 2022, Council resolved to proceed with the planning proposal with the following post-exhibition changes:

- Amend the Land Use Zoning map and associated maps to zone 0.97ha of Part C2 Environmental Management and RE1 Public Recreation to support a 30m buffer to the remnant patch of Elderslie Banksia Scrub Forest, Critically Endangered Ecological Community
- Amend the Land Use Zoning map to remove the proposed B1 Neighbourhood Centre zone within the proposed town centre and replace with B2 Local Centre zone
- Amend the Land Use Zoning map to slightly reduce the extent of R3 Medium Density Housing located south of proposed Park K by 1.68ha
- Amend Lot Size for Dual Occupancy Development Map to ensure consistency with associated mapping layers
- Amend Land Acquisition Map to expand the SP2 zoning of Spring Farm Parkway Stage 1 northern ramp by 0.08ha.

3.3.2 The department's recommended changes

Following the receipt of the revised planning proposal from Council, the department has made no further changes to the proposal.

3.3.3 Justification for post-exhibition changes

The department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the public authorities.
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment B1**), the planning proposal submitted to the department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains justifiably inconsistent with Ministerial Direction 1.4 Site Specific Provisions (formerly Direction 6.3), Direction 4.1 Flooding (formerly Direction 4.3), Direction 4.6 Mine Subsidence and Unstable Land (formerly Direction 4.2), Direction 7.1 Business and Industrial Zones (formerly Direction 1.1), Direction 9.1 Rural Zones (formerly Direction 1.2), and Direction 8.1 Mining, Petroleum Production and Extractive Industries (formerly Direction 1.3) and remains consistent with all other relevant Section 9.1 Directions
- Remains consistent with all relevant SEPPs

The following tables (**Table 5** and **Table 6**) identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in section 4.1.

Table 4 Summary of strategic assessment

| | Consistent with Gateway determination report Assessment | |
|---|---|--|
| Regional Plan | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| District Plan | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Local Strategic Planning Statement | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Local Planning Panel (LPP) recommendation | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Section 9.1 Ministerial Directions | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| State Environmental Planning Policies (SEPPs) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |

Table 5 Summary of site-specific assessment

| Site-specific assessment | Consistent with Gateway determination report Assessment | |
|-----------------------------|---|--|
| Social and economic impacts | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| Environmental impacts | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| Infrastructure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |

4.1 Detailed assessment

The following section provides details of the department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Section 9.1 Ministerial Direction 4.1 Flooding (formerly Direction 4.3)

This direction applies as the proposal seeks to alter a zone on flood prone land. Accordingly, the proposal must include provisions that give effect to or are consistent with the Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering flooding in land use planning guideline 2021, and any adopted flood study and/or floodplain risk management plan.

The planning proposal is inconsistent with this direction as it will rezone small portions of flood prone land from a rural zone to an urban purpose (residential) across the southern portion of the site which is not permitted by this Direction.

Council considers the inconsistency to be justified and of minor significance as the majority of lands below the 1% AEP will not be developed for urban purposes and only uses such as parks, conservation areas and the like would be permitted on land below the 1% AEP as outlined in Council's revised DCP for the site. Council also notes that the Water Cycle Management Plan (November 2018) includes measures to manage flooding and help facilitate urban development.

As discussed previously in the Gateway determination report, the inconsistency with the direction is justified and as of minor significance as all land below the 1% AEP will not be developed for homes or jobs and land uses on land below the 1% AEP are consistent with Council's adopted DCP for the site. The department is satisfied that the inconsistency is minor and justified.

4.1.2 Section 9.1 Ministerial Direction 4.3 Planning for Bushfire Protection (formerly Direction 4.4)

This direction applies where a planning proposal will affect or is in proximity to land mapped as bushfire prone.

The site contains bushfire prone land; consequently, the relevant planning authority must consult with the NSW Rural Fire Service (RFS) following receipt of a Gateway determination and prior to undertaking community consultation.

The Gateway determination issued on 21 October 2020 (**Attachment B**) included the following condition:

1(c) – Consult the NSW Rural Fire Service prior to public exhibition in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection and address any comments from this agency.

Pre-Consultation with the RFS took place 15 July 2021. RFS required an updated to the Strategic Bushfire Study to reflect the Planning for Bushfire Protection 2019. The Strategic Bushfire Study exhibited with the planning proposal has regard to Planning for Bushfire Protection 2019.

RFS made a submission on 11 November 2021 stating that there is no objection to the proposal subject to the future subdivision being assessed under 100B of the *Rural Fires Act 1997* and being demonstrated to comply with Section 5, 6 and 8.2.2 of Planning for Bush Fire Protection 2019 as applicable.

The department is satisfied that the planning proposal is consistent with Ministerial Direction 4.3 Planning for Bushfire Protection.

4.1.3 SEPP (Biodiversity and Conservation) 2021

The Gateway determination issued on 21 October 2020 (**Attachment B**) included a condition to remove and replace all references to the superseded SEPP 44 – Koala Habitat Protection and include a Vegetation Assessment Report with the public exhibition material.

The references in the planning proposal have been updated and a Vegetation Assessment Report was exhibited as an attachment to the planning proposal. The department is satisfied that the planning proposal is consistent with Chapter 4 Koala habitat protection 2021 of SEPP (Biodiversity and Conservation) 2021 (formerly SEPP (Koala Habitat Protection) 2021).

4.1.4 Social and economic impacts - Floorspace Ratio for commercial land

The Gateway determination issued on 21 October 2020 (**Attachment B**) determined that the proposal should proceed subject to conditions, including the following condition in relation to an FSR for commercial land:

1(i) – Prior to public exhibition, the planning proposal is to be amended as follows... Council is to propose a floor space ratio for the land zoned B1 Neighbourhood Centre and B2 Local Centre zoned land and include this in the public exhibition material.

Instead of the requested FSR provision, Council seeks to introduce a maximum GFA control of 23,000 sqm for retail development in the Menangle Park Town Centre via a new local clause in Part 7 Additional Local Provisions. Council's provided justification is that FSR control is not an appropriate means to control total retail floor area and may put upward pressure on built form.

The department acknowledges the justification from Council and is satisfied that this meets the intent of the Gateway condition.

4.1.5 Environmental Impacts - Flooding

The planning proposal seeks to rezone flood prone land for urban purposes. The department notes that the Independent Flood Enquiry is ongoing and that the current advice for Councils seeking finalisation of flood affected planning proposals is to seek the department's advice (see **Attachment I**).

In the Gateway determination report, it states that section 4.3 that the proposal was inconsistent with the Ministerial Direction for Flooding, but that *"the inconsistency is considered to be justified as of minor significance as all land below the 1% AEP will not be developed for urban purposes and only uses such as parks, conservation areas and the like would be permitted on land below the 1% AEP as outlined in Council's adopted DCP for the site"*. In section 5.3 of the Gateway determination report, the department noted that *"where there were minor areas of residential land affected by flooding, Council determined that the definition of habitable floor levels and evacuation routes are to be addressed in the application"*. Further, the report notes *"that the proposal does not result in significant increases in development of land affected by the 100-year ARI [Average Recurrence Interval] flood and PMF and this approach is proposed to be maintained"*. The department acknowledges that these statements are not consistent with each other. The planning proposal will allow for a small amount residential development within the flood planning level.

Several of the proposed C4 Environmental Living lots (approximately 40-50) would be partially impacted by a 1% Annual Exceedance Probability (AEP) flood event (see **Figures 2-5** below). The C4 Environmental Living Lots are large lots, with a minimum lot size of 4,000m² with river frontage. Dwellings would only be built above the 1% AEP line, as required by the revised DCP. There are no jobs proposed below the 1% AEP line.

In summary, in the planning proposal Council notes most of the land below the 1% AEP will not be developed for urban purposes and only uses such as parks, conservation areas and the like would be permitted on land below the 1% AEP as outlined in Council's revised DCP for the site. Council

also notes that the Water Cycle Management Plan (November 2018) (**Attachment H**) includes measures to manage flooding and help facilitate urban development.

As discussed in **section 3.2** above, the submission made by EH (October 2021) sought clarification of the fill strategy, updates to address the new Ministerial Direction and for the report to address differentiated impacts of development and the Hume Highway interchange. Council and the proponent responded to EH in December 2021. The response provided the clarifications requested and EH have confirmed that the response was adequate (January 2022) and made recommendation for DCP updates and future approvals. It is noted that, Council identifies that all roads and building envelopes will be required to be located above the 1% AEP. The department is satisfied that the concerns raised by EH with respect to flooding have been suitably addressed by the planning proposal.

As noted in **section 3.2** above, the Gateway determination sought consultation with the NSW State Environmental Services instead of the NSW State Emergency Services (SES), and consequently, the SES were not consulted on the proposal. The department sought comments from the SES directly and notes that SES have raised several concerns relating to the development. The SES in its comments to the department, noted that the full range of flood events should be considered, rather than focusing on the 1% AEP flood event. The department agrees with this and had already request from Council and the proponent information regarding what the number of dwellings and jobs that would be impacted by the Probable Maximum Flood (PMF) event. While detailed design work has not been undertaken for this area, but it is anticipated that approximately 130-180 dwellings would be impacted by a PMF event (see **Figures 5-6**). Note that there are also areas outside of the planning proposal site boundaries impacted by the PMF. These areas exist along the village lots near the rail line (see **Figure 5**). This is an increase of about 50 dwellings from what would be impacted by the PMF under the current zoning.

While the employment lands are impacted by the PMF, this planning proposal does not propose any changes to the area impacted by the PMF.

Flood evacuation routes were also raised by the SES in its previous submission (dated 1 February 2013) on the 2017 rezoning. The Water Cycle Management Report (November 2018 **Attachment H**) found that the major evacuation routes will be suitable for evacuation during all events up to and including the PMF. The department considers that evacuation routes, via Menangle Rd, Spring Farm Parkway (once constructed) and the Hume Highway are adequate for the proposal, as these will be constructed to be above the 1%AEP flood event. The department accepts that providing the future community with adequate time to evacuate is critical, and considers that as part of the development application process that further work on evacuation routes, including potential alternative routes should be considered. The department considers that this is the most appropriate time to undertake this work, as the plans would be considering development that is on the ground, rather than what could be developed within the precinct.

The department considers that the small increase in Environmental Living lots in this area is not significant and would not pose an evacuation threat, as Menangle Road and Spring Farm Park Way would provide evacuation routes for the entire precinct for a 1% AEP flood event.

As discussed in **section 4.1.1** above, the inconsistency with section 9.1 Direction 4.1 Flooding is justified as of minor significance as all land below the 1% AEP will not be developed for urban purposes and land uses on land below the 1% AEP are consistent with Council's adopted DCP for the site. Local flooding impacts associated with development can also be considered as part of future DAs.

The department considers that flooding matters have been adequately addressed and the planning proposal can be finalised.

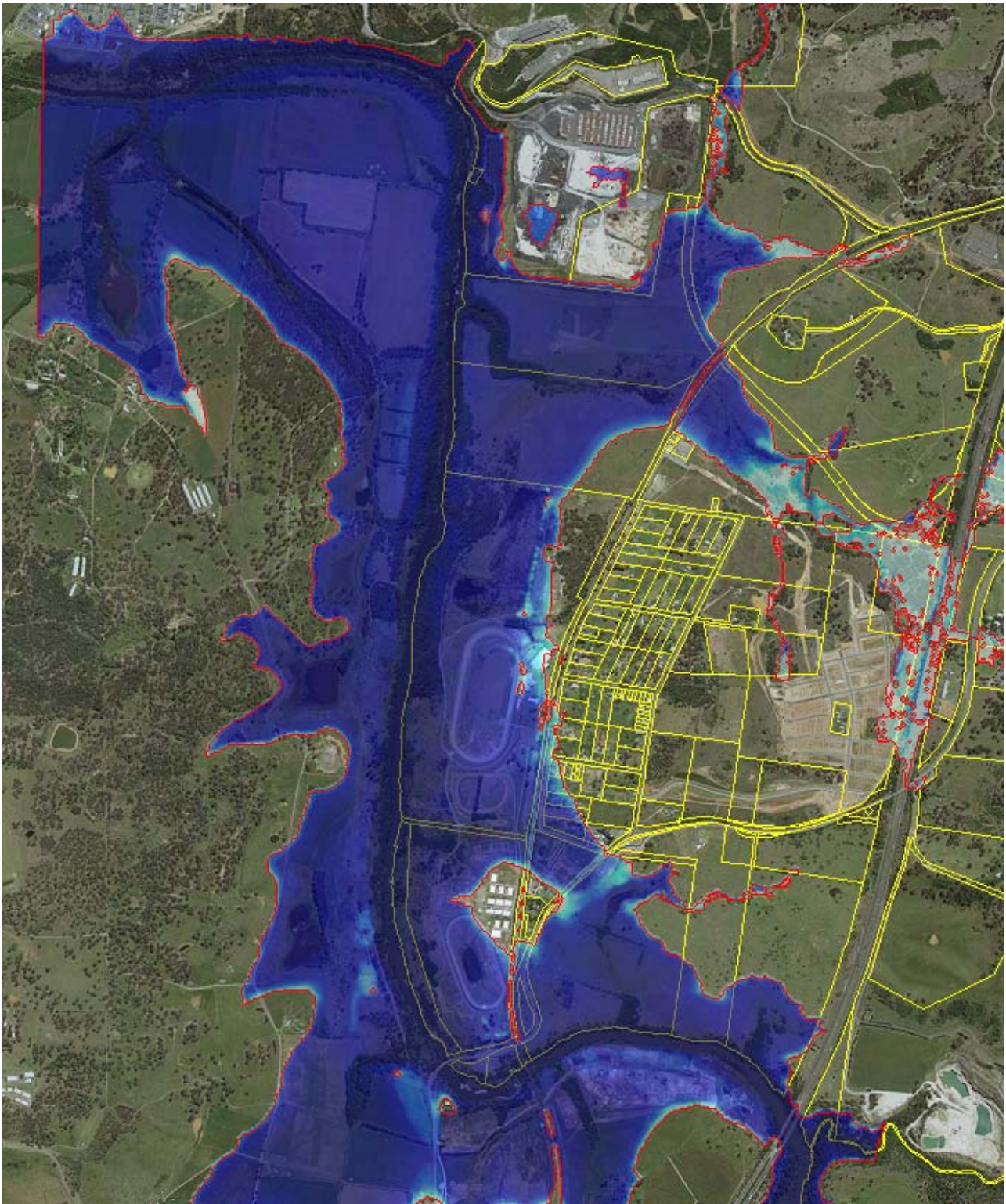


Figure 2 Subject site outlined in yellow with 1% AEP flood event outlined in red (source: Council correspondence (March 2022))

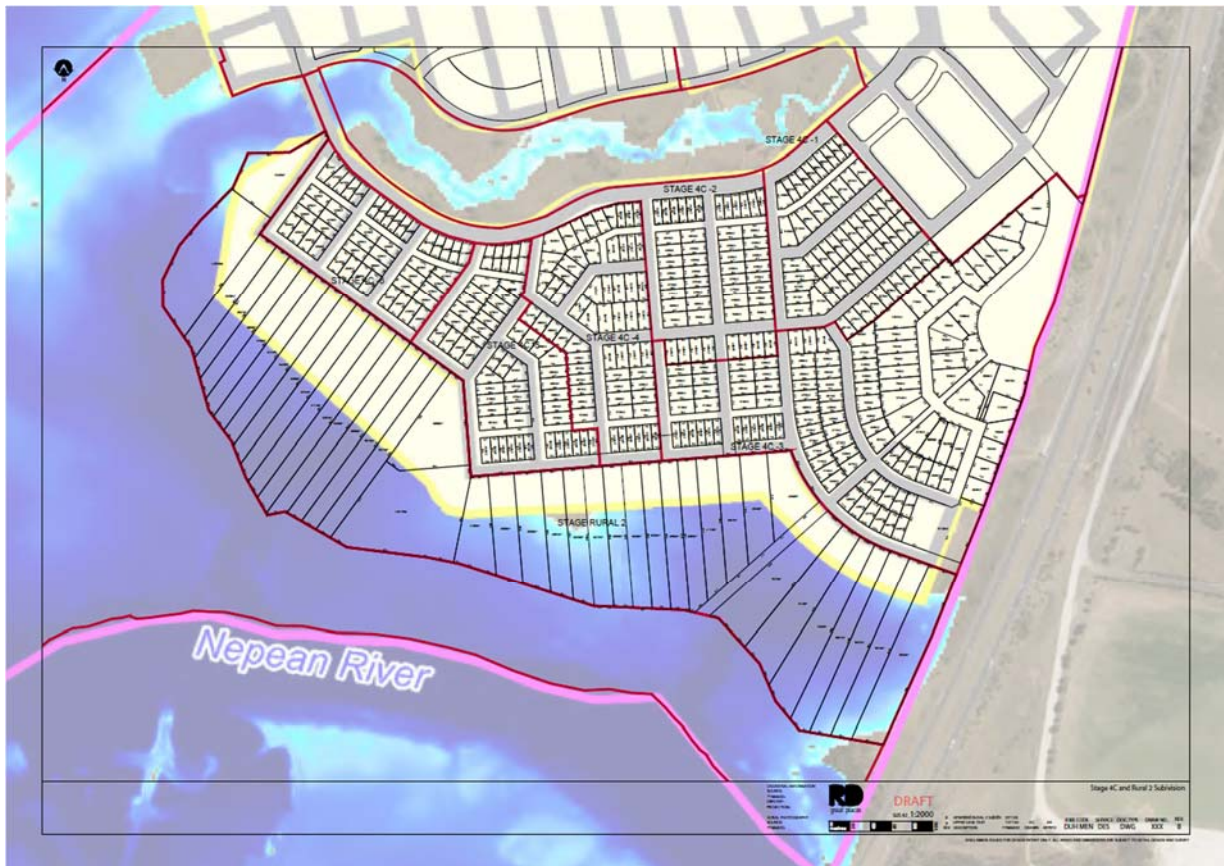


Figure 3 Detailed view of lots affected by 1% AEP flood event (source: Council correspondence (March 2022))

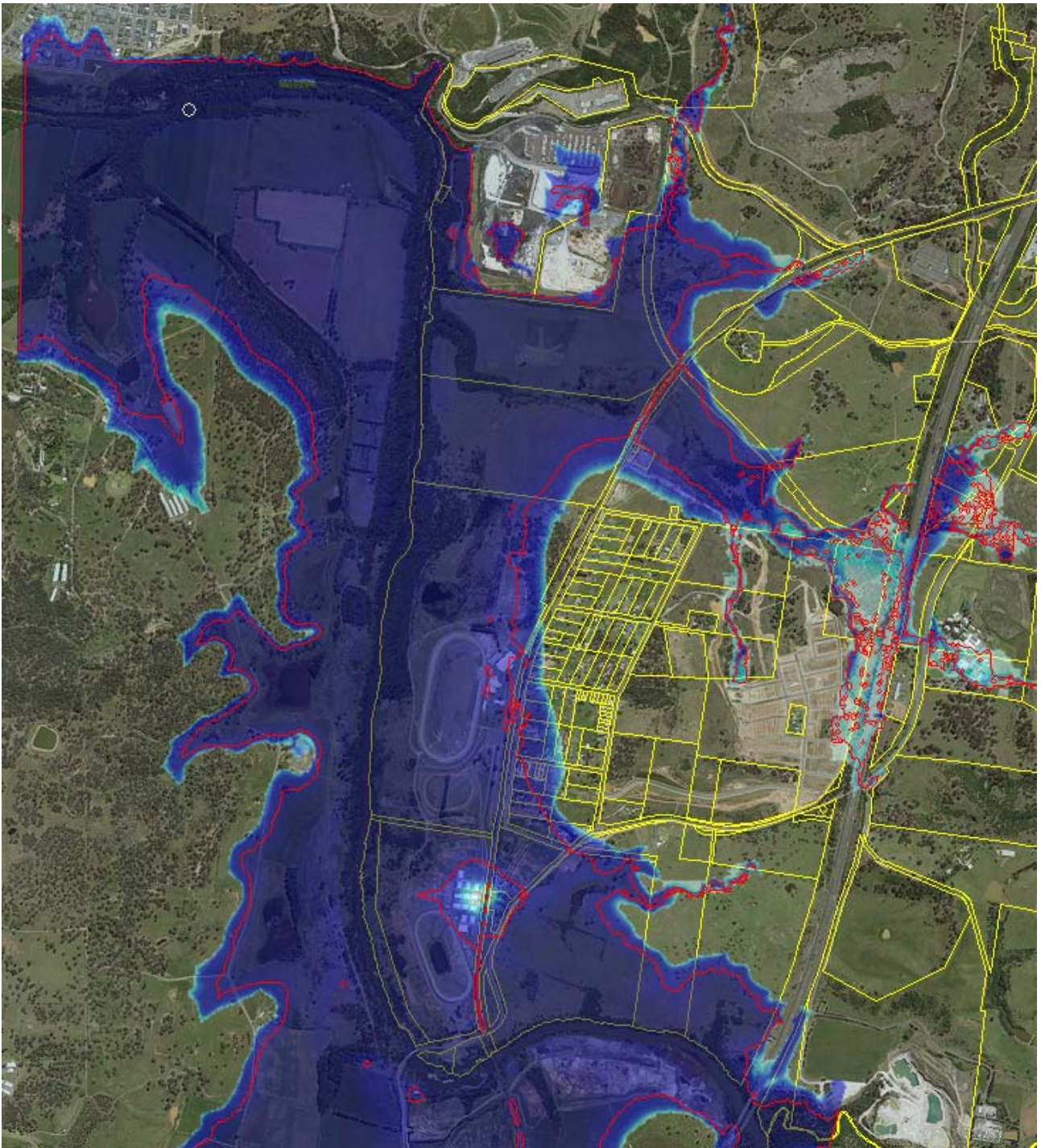


Figure 4 Subject site outlined in yellow with 1% AEP flood event outlined in red and PMF event shown in blue (source: Council correspondence (March 2022))

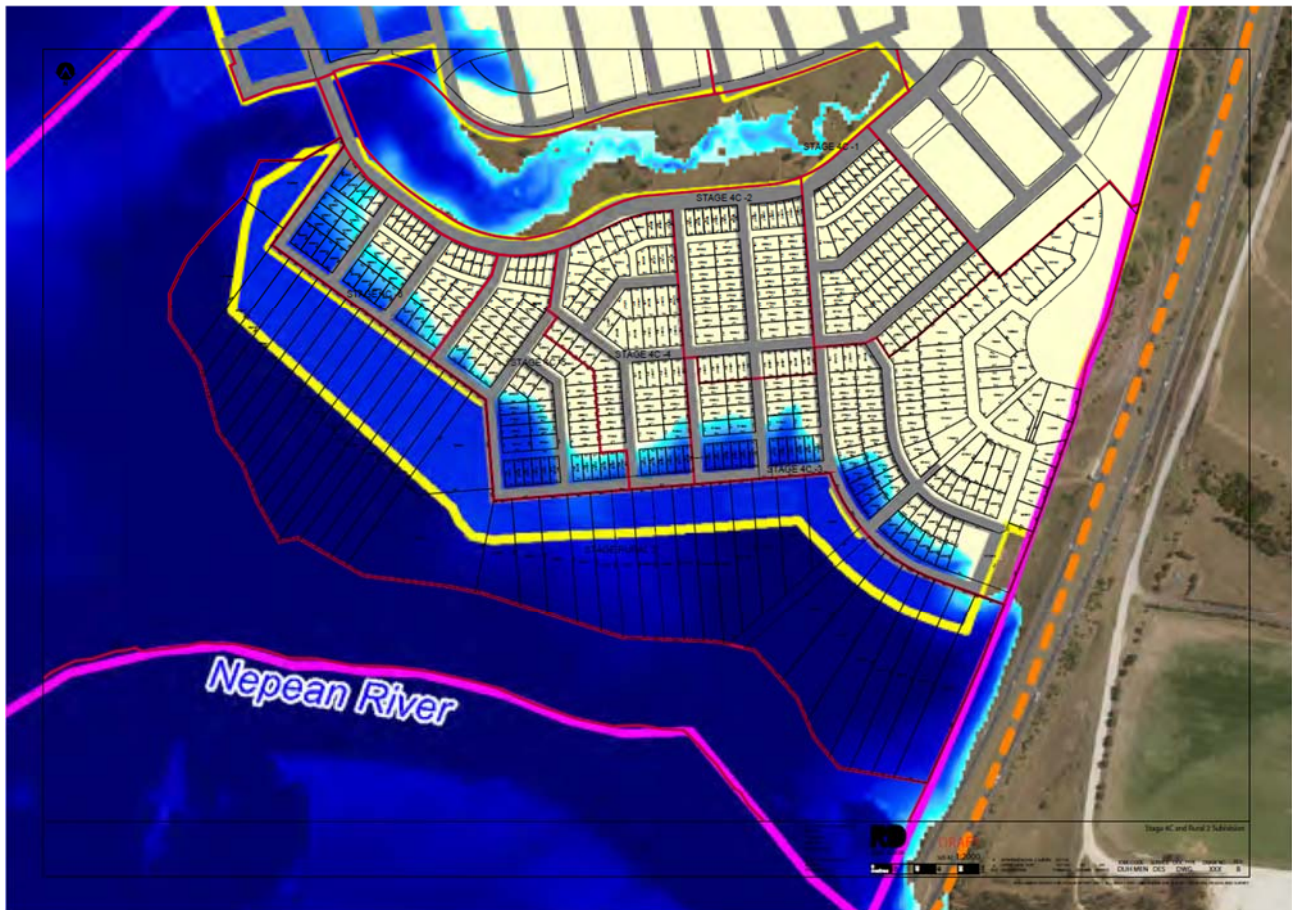


Figure 5 Detailed view of lots affected by PMF event (source: Council correspondence (March 2022))

4.1.6 Infrastructure - Acquisition authority for Spring Farm Parkway Stage 2

The Gateway determination issued on 21 October 2020 (**Attachment B**) included the following condition:

1(e) – Prior to public exhibition, the planning proposal is to be amended as follows: Consult Transport for NSW on traffic considerations and accepting the role of acquisition authority for Spring Farm Parkway Stage 2. If neither Transport for NSW nor Campbelltown Council accepts the acquisition role for Spring Farm Parkway Stage 2 then the identification of this land on the Land Acquisition Reservation Map is to be removed.

After meetings held between Council, the proponent, TfNSW and the department, TfNSW has been identified as the acquisition authority for the road corridor in accordance with the existing TIC Deed. The department notes TfNSW's comment that Spring Farm Parkway 2 is currently unconfirmed and unfunded and that there is no guarantee for TfNSW delivery.

The department considers that this matter has been adequately addressed and the planning proposal can be finalised.

5 Post-assessment consultation

The department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the department's assessment

| Stakeholder | Consultation | The department is satisfied with the draft LEP |
|-------------------------------|--|---|
| Mapping | 7 maps have been prepared by the Council and reviewed by the department's ePlanning team and meet the technical requirements. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |
| Council | <p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment D).</p> <p>Council confirmed on 13/04/2022 that it approved the draft and that the plan should be made (Attachment E).</p> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |
| Parliamentary Counsel Opinion | On 22/04/2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC . | <input type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Western City District Plan, the Greater Macarthur 2040 Interim Plan, the Campbelltown Local Strategic Planning Statement (LSPS), and the relevant State Environmental Planning Policies (SEPPs) and Ministerial Directions.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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26 April 2022

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Attachments

| Attachment | Document |
|------------|---|
| A | Planning Proposal (March 2022) |
| B | Gateway Determination (October 2020) |
| B1 | Gateway Determination Report (October 2020) |
| C | Gateway Alteration (April 2021) |
| D | Consultation with Council |
| E | Council comments on draft LEP |
| F | Property Description Table |
| G | Council post-exhibition report (March 2022) |
| H | Water Cycle Management Report (November 2018) |
| I | Independent Flood Enquiry correspondence to councils (April 2022) |
| PC | Parliamentary Counsel's Opinion |
| Maps | Draft LEP Maps |
| LEP | Draft LEP |
| MCS | Map Cover Sheet |
| Council | Letter to Council advising of the decision |