

Planning Services

Plan Finalisation Report

Local Government Area: Port Stephens

File Number: 16/14701

1. NAME OF DRAFT LEP

Port Stephens Local Environmental Plan 2013 Amendment No.20 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land at part of Lot 100 DP 1234206, being part of 29 Royal Avenue, Medowie (formerly Lot 1 DP 1224780, 63 Boundary Road, Medowie). The site is located on the northern periphery of Medowie and is approximately 38ha. The Medowie State Conservation Area is to the north, east and west of the subject site and existing rural residential development is to the South.



Figure 1 – Subject Land

3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the site from part E2 Environmental Conservation and part R5 Large Lot Residential to part E2 Environmental Conservation and part R2 Low Density Residential;
- reduce the minimum lot size for land proposed to be zoned R2 Low Density Residential from 1000sqm to 500sqm; and

- apply a height of building limit for the site of 9m.

The planning proposal will facilitate an additional yield of 135 lots to the existing approved DA of 345 lots. In total, 'The Bower' estate will yield 480 lots.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Port Stephens Electorate. Kate Washington MP is the State Member for Port Stephens.

Meryl Swanson MP is the Federal Member for Paterson.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 9 December 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

The proposal is due for finalisation on 16 December 2017.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 11 May 2017 to 25 May 2017. On 19 May 2017 Council met with several Medowie residents who had raised concerns with Councillors regarding the proposal. Consequently, the public exhibition period was extended to 8 June 2017.

In total, Council received 12 submissions; 11 objections (from the public) and 1 in support (from the proponent).

The key issues raised in the objections were:

- traffic management and control in relation to the construction of intersections and access points in the event of an emergency;
- storm water catchment and drainage issues relating to how stormwater will be directed and detained;
- the current character of Medowie as a rural village with a semi-rural outlook in line with the Medowie Strategy and the impact that a higher density subdivision will have on this character; and
- lack of community facilities and open space associated with the proposed subdivision.

Council addressed the issues raised in community submissions by providing the following information and advice.

Traffic and emergency access

The Traffic Impact Statement (TIS) concludes that the proposal will not have a major impact on the local road network. Council's Traffic Engineer has reviewed the proposal and supporting TIS and concludes that the road network and intersections will continue to operate at the best levels of service. In relation to access during the event of an emergency such as a bushfire, the NSW Rural Fire Service was provided with a copy of the Bushfire Threat Assessment (BTA) and raised no objection to the development provided primary and secondary access ways required in *Planning for Bushfire Protection 2006* are complied with at the time of subdivision.

Stormwater and drainage

A Flood and Drainage Assessment was undertaken as part of the first proposal for the subject site. It was undertaken to ensure adequate stormwater control measures are implemented to provide sufficient mitigation to reduce the impact of flooding on downstream properties. The assessment undertook modelling to investigate the impact of the proposed source controls on stormwater and flooding, with seven pre and post-development catchment and mitigation scenarios being modelled. The assessment demonstrated that both lot scale controls and subdivision scale controls can meet Council's requirements and that post-development runoff downstream of the development area is limited to pre-development (i.e. natural) levels.

Additional drainage information has been provided by the proponent to accompany the current proposal. Council engineers have reviewed this information and do not object to the proposal. Drainage information provided by the proponent considers the impacts of revising lot areas to the proposed detention basin sizes. The proponent advises the fraction of assumed impervious surface for residential development is 60% for lot sizes ranging from 450sqm to 2,000sqm. As the lot areas are proposed to be reduced from 1,000sqm to 500sqm, the fraction of impervious design requirements will remain the same and the existing approved detention basin sizes will be unaffected assuming catchment areas are unchanged. Council's Drainage Engineer has confirmed that the development does not drain to Medowie Road and that all stormwater from the development will be directed to Moffatt's Swamp catchment through three large detention basins, achieving a neutral or beneficial effect on water quality.

Character of Medowie

The Medowie Strategy notes the need to identify urban release areas within Medowie and to prioritise sites that: are in proximity to existing urban areas; are located on main transport routes, have access to community facilities, sewer and water infrastructure; reduce land fragmentation; are flood-free and are cleared land. Council submits that the subject site is consistent with these criteria and that the site was identified by the Strategy as having a potential dwelling yield of 480.

Community facilities and open space

Council has confirmed that the Bower Estate will be master planned and that, if the proposal is successful, the Port Stephens Development Control Plan 2014 (DCP) will be amended to address matters such as community facilities and open space that may be required by future residents. The DA process will further address such matters.

The Department considers that the information provided by Council adequately responds to the public's concerns and submissions. Adequate traffic and flooding/drainage studies have been undertaken. These support the proposal by providing data and modelling to show that the road network and drainage catchment system have the capacity to cater for the future subdivision. By identifying that the proposal is in keeping with the key determinants to

prioritising urban release areas, as outlined in the Medowie Strategy, Council has provided justification that the proposal is in keeping with the strategic planning principles for Medowie. Finally, given that the future residential subdivision will be master planned, the Port Stephens DCP will be able to adequately address open space and community facilities matters at the DA stage.

ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS), the Department of Defence and the NSW Rural Fire Service (NSW RFS) in accordance with the Gateway determination.

Council has consulted these authorities and received responses from these authorities, with Defence objecting to the proposal. The following summarises the issues raised, Council's response and the Department's assessment of the response.

OEH

OEH did not object to the proposal and acknowledged that the intensified residential rezoning is located within the footprint previously zoned for residential (Tab A).

RMS

RMS did not object to the proposal but raised the following issues relevant to the proposal (Tab B):

- the TIS addresses a maximum yield of 450 lots, rather than 480 lots and that assessment for the maximum yield should be carried out as part of the TIS to assess the impact on the intersection upgrade and whether an alteration to the approved intersection is required;
- the developer should take into account Section 117 Direction 3.4 Integrating Land Use Development and Transport in relation to the provision of adequate access to public transport and opportunities for pedestrian and cyclist connections; and
- Council should provide electronic modelling data (SIDRA 7) to RMS for review.

RMS also raised several matters relevant to the DA stage of the subdivision including that:

- if an upgrade to the approved Medowie Road / Boundary Road intersection is required, based on the reassessment of lot yields, the upgrade works should be constructed in accordance with the Austroads guide;
- concept plans for any works should be forwarded to RMS and the developer is to bear the full cost of any works;
- Council is responsible for managing the design and construction of any works and all matters relating to the local road network in the immediate vicinity of the subject site are for Council's determination;
- discharged stormwater from the subject site shall not exceed the capacity of the Medowie Road stormwater drainage system; and
- Council should ensure the developer is aware of the potential for road traffic noise to impact on development on the site.

Council provided the following information and advice to address the proposal-related matters raised by RMS:

- a Threshold Analysis for the Boundary Road and Medowie Road intersection was undertaken based on 450 lots. The analysis shows that the intersection will continue to operate at high levels of service;

- that the need for provision of cyclist infrastructure has been discussed with the proponent and the current design of the new intersection has been agreed upon; and
- that SIDRA modelling was provided to RMS.

The Department considers that Council has provided adequate information and advice in relation to the matters raised by RMS to support the proposal. Although the TIS only models a maximum yield of 450 lots, there will only be a minor percentage change in peak flows if the site is developed for 480 lots. The analysis reveals that 450 lots equates to 3330 vehicles per day being generated by the proposal, with 320 vehicles in the morning peak and 351 in the evening peak. This compares to the previous assessment work in 2015, where 370 lots was modelled and where the daily total was still 3330 vehicles per day, with a peak factor of 315 vehicles per hour. Given the change in peak flows between 370 lots and 450 lots is only around 10%, modelling an additional 30 lots (480 in total) is unlikely to reveal a significant increase in peak flows. The Department supports Council's conclusion that the intersection will continue to operate at high levels of service for a maximum yield of 480 lots.

Council has advised that in addition to discussions with the proponent over cyclist infrastructure, local traffic and transport infrastructure to accommodate broader future urban growth in Medowie is already identified in the Medowie Traffic and Transport Study and accompanying Port Stephens Development Contributions Plan 2007.

In regard to the request for SIDRA modelling, after obtaining the modelling from the developer, Council sought advice from RMS about whether RMS still required the modelling. RMS did not respond to Council's inquiry. The Department has followed this up with RMS however a response has not been provided. It is considered that the proposal can proceed regardless of RMS' review of this information, as Council has provided adequate information to demonstrate that the proposal will not negatively impact on the roads network.

Department of Defence

The Department of Defence objects to the proposal on the basis that the subject site will be impacted by aircraft noise due to its proximity to the RAAF Base Williamtown and Salt Ash Air Weapons Range ([Tab C](#)). Defence also advises that the subject site is constrained by building height controls that protect airspace near RAAF Base Williamtown to ensure the safety of aircraft on approach, departure and low-flying manoeuvres. It suggests that noise attenuation measures be adopted in the design and construction of any future residential dwellings and that building heights that exceed 7.5m be referred to Defence.

Council has addressed the Department of Defence's concerns. In summary:

- the site is not located within the current Australian Noise Exposure Forecast contour (ANEF);
- there are no requirements to meet aircraft noise attenuation requirements for AS 2021:2015 under the provisions of the Port Stephens DCP 2014 Chapter B7 Williamtown RAAF Base – Aircraft Noise and Safety;
- the site is located 2km from the boundary of the Port Stephens Council's Aircraft Noise Planning Area; and
- The Port Stephens DCP 2014 Chapter B7 Williamtown RAAF Base – Aircraft Noise and Safety and the associated Height Trigger Map will apply to manage future development and building height and ensure that structures higher than 7.5m are referred to the Department of Defence.

It is therefore considered that given that the subject site is not restricted by noise contours and adequate DCP requirements are in place to ensure building heights will not impact on the operations of the RAAF Base, the proposal should proceed. In addition, the current residential zoning of the site and its identification as a future residential area in the Medowie Strategy further supports the proposal. Finally, the proposal will deliver on the directions of the Hunter Regional Plan 2036, by creating a more compact urban settlement within the existing urban footprint and by providing greater housing choice.

NSW RFS

NSW RFS raised no objections to the proposal subject to a requirement that the future subdivision of the land complies with *Planning for Bush Fire Protection 2006* (Tab D).

7. POST EXHIBITION CHANGES

No changes were made to the planning proposal following public exhibition. The subject site is now identified as part of Lot 100 DP 1234206, 29 Royal Avenue, Medowie (formerly Lot 1 DP 1224780, 63 Boundary Road, Medowie) following recent registration of a subdivision, however this has not been amended in the planning proposal.

8. ASSESSMENT

The planning proposal has merit because it will assist in the delivery of additional housing yield in a relatively unconstrained location. Issues such as traffic and network capacity, drainage, and aircraft noise have been considered with input from agencies. These matters have been adequately investigated and adverse impacts are not anticipated. If required by Council, more detailed analysis will be required through the DA process based on final lot layouts and servicing provision for example in stormwater management. Further agency consultation may also be required, for example with Defence for building heights.

The proposal will create a more compact urban settlement footprint in Medowie and will deliver housing in an identified urban release area, in line with directions in the Hunter Regional Plan 2036 and the Medowie Strategy.

Section 117 Directions

Section 117 Directions 2.1 Environmental Protection Zones and 3.5 Development Near Licensed Aerodromes require consideration. The planning proposal is now consistent with the terms of the Directions for Directions 2.1 and 3.5. The proposal is inconsistent with section 117 Direction 4.4 Planning for Bushfire Protection. It is recommended that the Secretary's delegate agree that inconsistency with this Direction is considered to be of minor significance and justified.

2.1 Environment Protection Zones

The planning proposal will slightly increase the size of the boundary of the E2 Environmental Conservation zoned land from 0.9ha to 1.0ha. The Gateway determination required that further consultation with OEH was undertaken to determine the environmental impact of the increased density of development. OEH advised that it does not object to the proposal, given that it is located within the previously zoned residential footprint and will create a more regular shaped boundary for the pocket park, without reducing its size or the number of koala feed trees. The planning proposal has adequately addressed consistency with Direction 2.1 and no further approval is required in relation to this Direction.

3.5 Development Near Licensed Aerodromes

As the planning proposal is for land 'within the vicinity' of a licensed aerodrome, Direction 3.5 applies and requires that the responsible Commonwealth Department be consulted and that the Obstacle Limitation Service (OLS) be considered. Consultation with the Department of Defence has now occurred and the proposal is therefore consistent with this Direction. The Direction also requires that a planning proposal must not rezone land to residential purposes or increase residential densities on areas within certain ANEF contours.

The subject site is not located within the current ANEF contours. Notwithstanding, the Department of Defence objects to the proposal due to its proximity to the RAAF Base Williamtown and Salt Ash Air Weapons Range and the expected aircraft noise associated with the site. Given that the proposal is not in an ANEF mapped area, that adequate planning controls exist to limit building heights and that general notation of aircraft noise within the LGA is placed on 149(5) certificates issued by Council, the planning proposal is considered consistent with this Direction.

Furthermore, the site has been mapped as an urban release area for some time. The planning proposal will realise the intention that this land be used for the delivery of housing. The proposal is in line with several Directions of the Hunter Regional Plan 2036, including creating compact settlements and providing greater housing choice. The planning proposal is consistent with Direction 3.5 and no further approval is required in relation to this direction.

4.4 Planning for Bushfire Protection

Council has advised that the NSW Rural Fire Service was consulted during the exhibition process in accordance with condition 1 of the Gateway determination. NSW RFS did not object to the proposal provided *Planning for Bushfire Protection 2006* is complied with during future development, particularly the requirement for APZs associated with vegetation and the proposed tree corridors and Koala Habitat Reserve. However, as Direction 4.4 also requires the planning proposal to introduce controls for bushfire protection, the proposal is inconsistent with this Direction. Given adequate consultation with NSW RFS has occurred and future development will have regard to the provisions of *Planning for Bushfire Protection 2006* and the necessary controls, it is considered that inconsistency with Direction 4.4 is minor and justified.

State Environmental Planning Policies

The draft LEP is consistent with the relevant SEPPs, including SEPP 44 – Koala Habitat. The proposal is consistent with SEPP 44 as a Flora and Fauna Impact Assessment has been conducted for the site and the increased E2 Environmental Conservation zoned area of the subject site will retain koala feed trees, 'Preferred Koala Habitat' and associated buffers and links. OEH has raised no objection as the intensified residential rezoning is located within the previously zoned residential footprint.

9. MAPPING

There are maps associated with the Planning Proposal. Three map sheets will be revoked as part of the Proposal and three new map sheets will be adopted. The Department's ePlanning team has reviewed the maps and confirmation has been given that they are correct and have been sent to Parliamentary Counsel.

Maps to be revoked	Maps to be adopted
Land Zoning Map	Land Zoning Map

LZN_004B 6400 COM LZN 004B 020 20161004	LZN_004B 6400_COM_LZN_004B_020_20170828
Lot Size Map LSZ_004B 6400_COM_LSZ_004B_020_20161004	Lot Size Map LSZ_004B 6400_COM_LSZ_004B_020_20170828
Height of Buildings Map HOB_004B 6400 COM HOB 004B 020 20161004	Height of Buildings Map HOB_004B 6400_COM_HOB_004B_020_20170828

10. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument on **(Attachment D)**. Council confirmed on 4 October 2017 that it was happy with the draft and that the Plan should be made **(Attachment E)**.

11. PARLIAMENTARY COUNSEL OPINION

On 12 October 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

12. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP because it:

- will facilitate increased lot yield in an identified Urban Release Area, in line with the directions of the Hunter Regional Plan 2036;
- will provide for the housing needs of Medowie in an area free of flooding and where biodiversity constraints have been resolved;
- has adequately addressed traffic control, hazard, drainage and aircraft noise and operation issues raised through consultation, with more detailed investigation to occur at DA stage; and
- will deliver the Hunter Regional Plan 2036 and local planning strategies by providing for housing within the existing approved residential footprint.



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