

Planning Services

Gateway Determination Report

LGA	Lake Macquarie
RPA	Lake Macquarie City Council
NAME	Remove land from the Land Reservation Acquisition Map and rezone land for urban uses
NUMBER	PP_2017_LAKEM_003_00
LEP TO BE AMENDED	Lake Macquarie LEP 2014
ADDRESS	Various sites in Mt Hutton
DESCRIPTION	Various
RECEIVED	21 September 2017
FILE NO.	17/11637
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The proposal seeks to remove land identified in the Land Reservation Acquisition (LRA) Map as it is no longer required for a public purpose. The subject land will also adopt the zoning, lot size and height of building development standards of the adjoining land.

Council initially intended to acquire the land for stormwater works and the Willow Road extension. However, Council has recently undertaken a number of studies which indicated the proposed works were no longer necessary, and as such the land should be removed from the LRA Map.

Council proposes to retain parts of the land on the LRA Map including:

- Land within the 1% AEP flood area;
- Land on 85 Tennent Road required for access to Council's land locked assets at 83 Tennent Road; and
- Land either side of Scrubby Creek for a pathway along the creek and for potential creek maintenance/ rehabilitation.

Site Description

The following table indicates the address, zone and existing use of the proposed sites.

ADDRESS	DESCRIPTION
72 Wilsons Road, Mount Hutton, Lot 13 DP 11260	Zone – Part B2 and RE1 Contains a single dwelling
74 Wilsons Road, Mount Hutton, Lot 141 DP 614672	Zone – Part B2 and RE1 Contains an out building

74A Wilsons Road, Mount Hutton, Lot 142 DP 614672	Zone – Part RE1 and R2 Vacant
85 Tennent Road, Mount Hutton, Lot 26 DP 17261	Zone – Part R2 and RE1 Contains a single dwelling and outbuilding
1-7 Merrigum Street, Windale, Lot 14 DP 874801	Zone – Part RE1, Part R2 Residential subdivision
Scrubby Creek Reserve unidentified parcel (Creek channel allotment)	Zone - RE1

Figure 1 is an aerial of the subject land.



Figure 1: Aerial of the subject land. Near Maps, 2017.

Surrounding Area

The surrounding area is characterised by a mix of low density residential development and the Mount Hutton commercial centre to the west. The surrounding zones are predominantly R2 Low Density Residential, R3 Medium Density Residential, B2 Local Centre and RE1 Public Recreation.

Figure 2 is an aerial of the subject site and surrounding area.



Figure 2: Aerial of the subject land and surrounding area. Near Maps, 2017.

Summary of Recommendation

The proposal should proceed subject to conditions. In summary, the proposal is supported because the land is privately owned and is no longer required by Council for public purposes. The private land should be removed from the LRA Map and rezoned as the existing RE1 zoning is redundant. A new zone and development standards should be put in place that reflect the current and intended uses.

The proposed B2 and R3 zone (and associated development controls) are consistent with the zone and development standards applying to adjoining land, and align with the planned urban direction for the area. Use of the site for urban purposes makes the most of existing infrastructure and services and would permit development of a scale consistent with the urban context and character.

It is consistent the Hunter Regional Plan 2036 because it would provide infill housing, close to transport and existing services, as well as the Council's Lifestyle Strategy 2030 as it would provide opportunities for additional infill housing in the Mount Hutton town centre.

Land below the 1% AEP flood level is to be retained as RE1 Public Recreation. Council has used new flood study data to determine where this level is and in turn where the LRA and RE1, R3 and B2 zone boundary should be. OEH should be consulted on this aspect, noting that the flood planning level used in this proposal is inconsistent with the LEP flood planning maps.

PROPOSAL

Objectives

The objectives of the proposal are to:

- Amend the LRA Map by removing land in Mount Hutton that Council no longer needs to acquire for public purposes; and
- Rezone land to be in line with the intended future land uses.

Explanation of Provisions

The following is a summary of the proposed amendments to the Lake Macquarie LEP 2014 for each property. Figure 1 as well as the maps in the following section of this report should be referred to as they assist in understanding the changes proposed.

72 Wilsons Road, Mount Hutton (Land along Scrubby Creek)

Council intends to still acquire those parts of the site which are below the 1% AEP flood level. This has meant a reduction in the land to be acquired. As a result, those lands no longer required are to be removed from the LRA map, be rezoned from RE1 to B2, and the maximum building height is to change from 8.5m to 13m. No minimum lot size would continue to apply.

74A Wilsons Road, Mount Hutton

This land is owned by Council and is split zoned RE1 and R2. The R2 portion was to apply to the land which was to form the new road. As the road is no longer proceeding, Council intends to rezone the R2 portion to RE1 and remove the 450 sq.m minimum lot size, consistent with the remainder of the site.

74 Wilsons Road, Mount Hutton

Council intends to still acquire those parts of the site which are below the 1% AEP flood level. This has meant a reduction in the land to be acquired. Further, part of the site was to be acquired for the road and this area is no longer required. As a result, those lands no longer required are to be removed from the LRA map, are to be rezoned from RE1 to B2 and R2 to B2, the maximum building height is to be increased to 13m across the entire site (from 10 and 8.5m), and no minimum lot size it to continue to apply.

85 Tennent Road, Mount Hutton

Part of the site was identified for acquisition for stormwater management and for the new road. Council intends to still acquire those parts of the site which are below the 1% AEP flood level, and while the road reserve component is no longer required, it intends to still acquire part of this land in order to provide access to the Council owned land on this side of the creek.

As a result, part of the land originally identified for acquisition is now to be removed. This part is to be rezoned from RE1 and R2 to R3, the maximum building height is to change from 8.5m to 10m, and a minimum lot size of 900sq.m is to apply (currently no minimum lot size applies). These planning controls are consistent with those currently in place for the remainder of the site.

1-7 Merrigum Street, Mount Hutton

Part of the site on the northern side of the creek was to be acquired for the road reserve. While it is no longer needed for road reserve, Council intends to acquire it to provide access from Tennent Road/ Willow Road to the Council owned land on the norther side of the creek. It is to be rezoned from R2 to RE1, its acquisition purpose on the LRA map is to change from Local Road (R2) to Local Open Space (RE1), and the minimum lot size is to change from 450 sq.m to no minimum lot size.

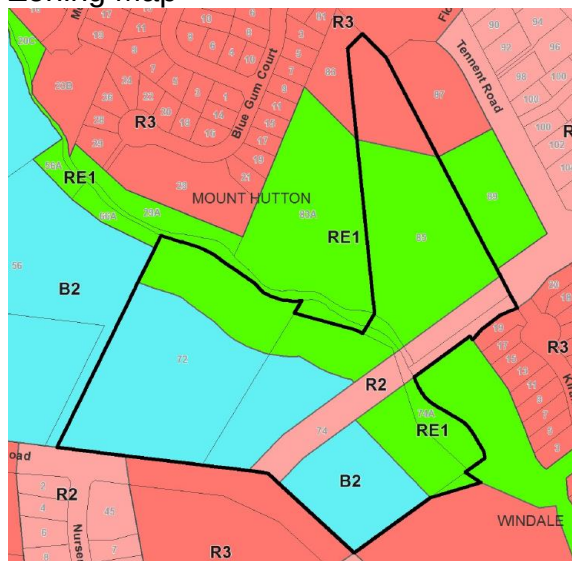
Council is also proposing to change the planning controls for another part of this site located on the southern side of the creek. This portion is not in public ownership and is not identified for acquisition currently and mostly sits outside of the flood affected area, however it is zoned RE1. Council propose to amend the zone to create consistency with the adjoining land. Council intends to rezone this portion from RE1 to R3, apply a 900sq.m minimum lot size (none currently applies), and change the maximum building height from 8.5m to 10m.

Mapping

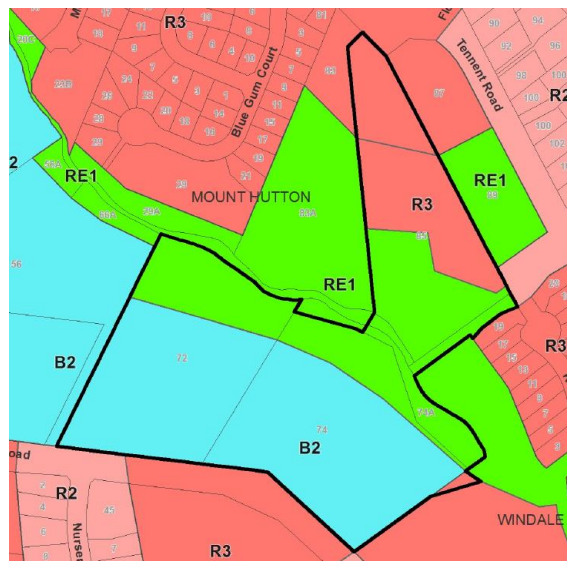
The maps provided in the proposal are adequate for public exhibition. The proposal would amend four LEP map layers as detailed in the below map comparisons.

Existing Map

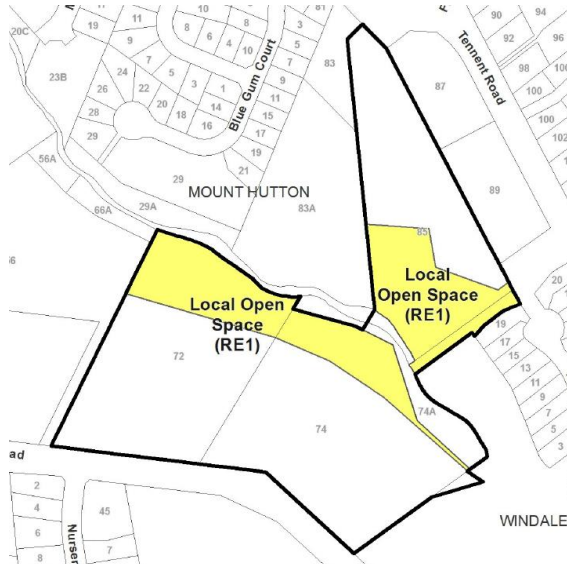
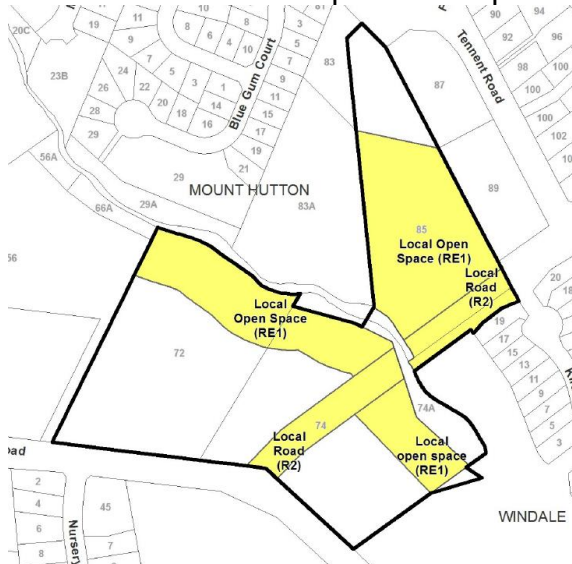
Zoning Map



Proposed Map



Land Reservations Acquisition Map



Height of Building Map

Council undertook two stormwater catchment investigations and a traffic and transport study which concluded part of the land is no longer required for acquisition. This justification and the merit of the proposed planning controls is discussed below.

The land was initially mapped as LRA because Council intended to capture and store runoff on 83A, 85 and 89 Tennent Road. Council since acquired 83A and 89 Tennent Road.

The Catchment Investigation and Concept Design Report recommended various capacity improvements within the area. However, the Jewells Wetland Floodplain Risk Management Study and Plan July 2017 concluded that these works were not cost effective or necessary. Further, the Study notes that if upgrades were required all works could be undertaken on Council owned land and acquisition was no longer required for the additional sites.

Removal of the subject land from the LRA is justified given Council no longer requires the land for public purpose.

Land no longer required for a local road

The land was initially mapped as LRA because Council intended to extend Willow Road to the southwest to intersect with Wilsons Road.

Council have since undertaken the Traffic and Transport Study for the Charlestown Contribution Catchment Plan which recommended the 'Wilsons Road to Willow Road link not be constructed and removed from the LEP'. The study noted that the proposed extension was too expensive and did not result in significant benefit to the local community.

The proposed road is currently zoned R2, this proposal would rezone the land to B2, to be consistent with the adjacent land.

Removal of land identified for the Willow Road extension from the LRA map is justified as the road is no longer proposed and the land is not required for acquisition.

Land to be retained on the LRA map

The proposal intends to retain the 1% AEP flood affected land on the LRA map and maintain the current RE1 zoning. Part of 85 Tennent Road will also be retained to provide Council with access to Council's land and the riparian corridor.

Council's proposal indicates that the remaining LRA land either side of Scrubby Creek may be used for a pedestrian pathway in the future, however the pedestrian pathway is not included in this proposal.

The proposed amendments are supported as they are based on recommendations from relevant studies and update the acquisition maps in accordance with Council's public works requirements.

Proposed zone and development standards

The land no longer required for acquisition is to adopt the zone and development controls, including height and minimum lot size, of the adjoining land on either side of the creek. The additional urban land will contribute to housing and commercial development in the Mount Hutton town centre. The proposed changes are supported as retention of the existing RE1 and R2 zoning is no longer appropriate.

Council advised the height controls for the B2 zoned land at 74 Wilsons Road would be increased to bring them in line with the controls of other B2 land in Mount Hutton. Council also advised that the proposed amendments were supported by the Mount Hutton Town Centre Area Plan to be exhibited at the same time as the proposal. The proposed changes are supported as they will provide consistent controls across the B2 zone in Mount Hutton.

Council advised part of 1-7 Merrigum Road would be rezoned from RE1 to R3 to provide a consistent boundary. Although the site is not identified for public acquisition, the proposed

changes are supported as the amendment will bring the zone and controls in line with the adjoining R3 land and the site is not significantly impacted by flooding.

The proposal indicates that an LEP amendment is the best means of achieving the intended outcome as Council studies indicate that the land is no longer required for public purposes. Further, in accordance with Section 23 of the *Land Acquisition Act (Just Terms Compensation) 1991* Council may be required to acquire the land if the LEP is not amended, even though the land is no longer required for public purposes.

It is considered that a planning proposal to amend the Lake Macquarie LEP 2014 is the most appropriate way achieve the intended outcome. There are no other alternative means of achieving Council's intended outcome.

STRATEGIC ASSESSMENT

Regional

HUNTER REGIONAL PLAN 2036 (HRP)

Council's assessment notes the proposal is consistent with the Hunter Regional Plan as the proposed zoning amendment will provide greater housing choice and revitalise existing centres.

The proposal provides an opportunity for infill development, while retention of parts of the land for a shared pathway will contribute to active transport in the region. It also assists in reducing hazards through Council's intention to acquire land below the 1% AEP line in this location. It is considered that the proposal supports the following Directions:

- Direction 16 – Increase resilience to hazards
- Direction 18 – Enhance access to recreational facilities and connect open space;
- Direction 20 – Revitalise existing communities;
- Direction 21 – Create compact settlement;
- Direction 22 – Promote housing diversity; and
- Direction 23 – Grow centres and renewal corridors.

Local

LIFESTYLE 2030 STRATEGY (LS2030)

Council's assessment notes the proposal is consistent with the aims of the LS2030. The proposal, through rezoning land, will provide opportunities for infill within the Mount Hutton town centre.

The proposal is consistent with the strategic direction for Mount Hutton centre and the proposal will facilitate a mix of commercial services, retail, community facilities and residential development.

Section 117(2) Ministerial Directions

Council has identified that the proposal is consistent with the following Section 117 Directions:

- 1.1 Business and Industrial Zones
- 1.3 Mining, Petroleum production and Extractive Industries
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land

- 5.10 Implementation of Regional Plans (incorrectly labelled as 5.1)
- 6.1 Approval and Referral Requirements
- 6.2 Reserving and for Public Purposes
- 6.3 Site Specific Provisions

However, the proposal is inconsistent with the following Section 117 Directions or further work is required before consistency can be determined:

1.1 BUSINESS AND INDUSTRIAL ZONES

This Direction applies as the proposal will result in additional business zoned land. The Direction states that new employment areas should be in accordance with a strategy that is approved by the Director-General. It is considered that the inconsistency is minor as the proposed B2 land adjoins other business zoned land, the increase is not significant and the sites is close to the Mount Hutton town centre. Inconsistency with this Direction can be justified as it is of minor significance.

3.1 RESIDENTIAL ZONES

This Direction applies as the proposal will allow significant residential development. The Direction states that a Planning Proposal must include a requirement to ensure a site is adequately serviced prior to development. It is considered that Council's LEP and DCP provide suitable controls to address servicing requirements at the Development Application stage and therefore additional requirements do not need to be included in the proposal. The inconsistency with this Direction can be justified as it is of minor significance.

4.3 FLOOD PRONE LAND

This Direction applies as the proposal seeks to amend the zoning of flood prone land. Council indicates the proposal is consistent with the Direction as the amendment will retain all land within the 1% Annual Exceedance Probability (AEP) as RE1 Public Open Space. However, it is noted that the proposed LEP amendments do not directly correlate with the Lake Macquarie LEP Flood Planning Map. Council should address any inconsistencies and consult with OEH prior to public exhibition.

4.4 PLANNING FOR BUSHFIRE PROTECTION

This Direction applies as a small part of the site is identified as vegetation buffer. Council should address the terms of the Direction and consult with NSW Rural Fire Service.

5.10 IMPLEMENTATION OF REGIONAL PLANS

Council should update the proposal to remove reference to 5.1 Implementation of Regional Strategies include Direction 5.10 Implementation of Regional Plans.

6.2 RESERVING LAND FOR PUBLIC PURPOSES

This Direction applies as the proposal would reduce land identified for reservation acquisition. Given the proposal is consistent with Council's strategic work and the land is no longer required for a road extension and flood mitigation works, any inconsistency with this direction is considered to be justified.

State Environmental Planning Policies

SEPP 55 – REMEDIATION OF LAND

In accordance with clause 6 of SEPP 55 a preliminary investigation is required for residential, educational, recreational and childcare purposes. No preliminary investigation has been provided. Council must ensure the site is suitable for the R3 and B2 permissible uses and include the assessment findings in the public exhibition.

SITE SPECIFIC ASSESSMENT

Social

The proposal states the land either side of Scrubby Creek may be used for a pedestrian pathway, which would link surrounding residential areas to the Mount Hutton commercial centre. Mount Hutton is not a particularly walkable town centre due to the lack of pathways and low density of the surrounding area.

The proposed shared pathway along Scrubby Creek would improve the walkability of Mount Hutton. However, it should be noted that the pathway is not a part of this proposal.

Environmental

The proposed amendment was informed by the stormwater study which concluded the land was no longer required for stormwater works and the amendment to the LRA map would not impact the flood catchment.

It is considered that the proposed zone amendments are appropriate given they are consistent with the stormwater study and all 1% AEP land will be zoned RE1 to avoid increasing flood impacts down-stream.

Council's Traffic and Transport Study recommended that the Willow Road extension not be constructed and removed from the LEP as it would not significantly improve travel times in the area. Other, less costly works are proposed in its place. Removal of the Willow Road extension from the LRA map is supported.

The proposal will permit an increase in both residential and commercial density. Council's proposal does not address potential traffic impacts from the amendments. However, given part of the land was already zoned for urban use and the site is within the existing town centre the proposal is unlikely to result in a significant impact on traffic.

Given the current and previous land uses the site is unlikely to be contaminated, but a preliminary study is required to confirm the likelihood of contamination because sensitive uses are permitted in the new zones.

A small part of the site is identified as bushfire prone vegetation buffer, this land is not being rezoned and any future development would be required to comply with bushfire requirements.

Economic

Indirect economic benefits may result from the proposal for both Council and the landowners whose land is to be rezoned from RE1 and R2 to B2 and B3. Council has identified that the work is not cost effective relative to the benefits and so it that money may be better spent elsewhere. Some landowners may also benefit should they seek to redevelop their land following the rezoning.

Additional residential and commercial zoned land within the Mount Hutton town centre may also result in more jobs (construction and ongoing).

The land is located within an existing urban area adjacent to the retail centre. Use of the sites for urban development would maximise use of existing urban infrastructure and transport services. These sites could connect to existing water, sewer and electricity services.

CONSULTATION

Community

Council has proposed 28 days community consultation period.

Despite this, the proposal is low impact and as such should have a minimum exhibition period of 14 days. The Department raises no concern with Council's proposed exhibition period.

Agencies

SUBSIDENCE NSW

Council note the proposal should be referred to Subsidence NSW as the site is within a Mine Subsidence District. However, the site is not identified on the updated Subsidence NSW mapping. Referral is not required.

HUNTER WATER CORPORATION

The proposal will result in an increased demand on water and sewer services. The proposal could be referred to Hunter Water at the development application stage for comment to determine whether there is sufficient capacity to service the additional density within the area. Referral is not required.

NSW OFFICE OF WATER (SCRUBBY CREEK)

Council note the proposal should be referred to the NSW Office of Water, however no justification was provided. Given the land either side of Scrubby Creek will be retained as RE1, referral to the Office of Water is not required.

OFFICE OF ENVIRONMENT AND HERITAGE (OEH)

Council note the proposal should be referred to OEH for flooding. Given inconsistency with Section 117 Direction 4.3 Flood Prone Land is yet to be resolved, Council should consult with OEH.

NSW RURAL FIRE SERVICE (RFS)

The proposal should be referred to RFS to address the terms of Section 117 Direction 4.4 Planning for Bushfire Protection.

TIMEFRAME

Council's projected timeline suggests the proposal would be finalised by December 2017, providing a three (3) month timeframe. Given agency consultation is required a 6 month timeframe should be granted.

DELEGATION

Council has requested plan making delegation. Given the proposal is minor in nature the delegation is supported.

CONCLUSION

The proposal is supported to proceed with conditions for the following reasons:

- it is consistent with the Hunter Regional Plan 2036 because it would provide infill housing, close to transport and existing services;
- it is consistent with the Lifestyle Strategy 2030 as it would provide opportunities for additional infill housing in the Mount Hutton town centre;
- the land is privately owned and is no longer required by Council for public purposes. It should be removed from the LRA Map and the RE1 zone replaced with new zone and development standards;
- land below the 1% AEP flood level is to be retained as RE1 Public Recreation; and
- the proposed B2 and R3 zone (and associated development standards) are consistent those applying to adjoining land, and align with the planned urban direction for the area. Use of the site for urban purposes makes the most of existing infrastructure and services and would permit development of a scale consistent with the urban context and character.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree any inconsistencies with Section 117 Directions 1.1 Business and Industrial Zones, 3.1 Residential Zones and 6.2 Reserving Land for public purposes are minor; and
2. Note that the inconsistency with Section 117 Directions 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. Council is to update the planning proposal prior to community consultation to:
 - Remove reference to Section 117 Direction 5.1 Implementation of Regional Strategies and correct the reference to refer to Section 117 Direction 5.10 Implementation of Regional Plans;
 - Address inconsistencies with Section 117 Direction 4.3 Flood Prone Land;
 - Address inconsistencies with Section 117 Direction 4.4 Planning for Bushfire Protection;
 - Ensure that the Planning proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. If required, Council is to prepare an initial site contamination investigation report to demonstrate that the site is suitable for rezoning to the proposed zones.
2. Community consultation is required under Sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).

3. Consultation is required with the following public authorities under Section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant Section 117 Directions:

- Office of Environment and Heritage; and
- NSW Rural Fire Service

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be **6 months** following the date of the Gateway determination.
6. The final LEP maps shall be prepared in accordance with the requirements of the Department's "Standard Technical Requirements for Spatial Datasets and Maps" Vers: 1.0 November 2015.



25/9/2017

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