

# Planning Proposal



## **Minimum subdivision lot sizes for certain split zones and community title schemes**

**July 2014**

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# MINIMUM SUBDIVISION LOT SIZES FOR CERTAIN SPLIT ZONES AND COMMUNITY TITLE SCHEMES

## Summary of Proposal

<b>Proposal</b>	Instrument amendment – Minimum subdivision lot sizes for certain split zones and community title schemes
<b>Applicant Details</b>	The City of Newcastle Council

## Background

Under the Newcastle LEP 2012 some lots have split zoning, containing part residential, commercial or industrial zoned land and part environmental zoned land.

Prior to the adoption of the Standard Instrument LEP, Council did not have minimum lot sizes within the LEP (Newcastle LEP 2003) but rather a clause that prohibited subdivision of environmental land (other than boundary adjustments). Under the former LEP instrument a larger parcel of split zoned land could have the residential, commercial or industrial zoned area subdivided provided the environmental zoned land itself was not being subdivided. This enabled even smaller residual areas of environmental zoned land (e.g. watercourse) to be part of the larger subdivision development.

Under the Standard LEP Council could not carry forward the subdivision clause from the former instrument so instead imposed a minimum lot size of 40Ha for environmental zoned land to effectively prevent fragmentation. The operation of Clause 4.1 Minimum lot size prevents the subdivision of split zoned land where any of the lot sizes will be below the minimum specified. This is problematic on lots containing environmentally zoned land where such land is already below the minimum area of 40Ha. Even if it is not proposed to subdivide the residual environmental zoned land itself the allotment containing this land is below the minimum and therefore Clause 4.1 prevents the entire subdivision from occurring.

A merits assessment cannot be applied in these circumstances as the Standard LEP instrument clause 4.6)6) (below) restricts a variation from the minimum lot size for environmental zoned land.

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) ***the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.***

It is not Council's intention to prevent a subdivision of the residential, commercial or industrial zoned section of a split zoned property where the environmental land is already below 40Ha

in area. In these cases it would generally be considered acceptable to retain these environmental areas at the existing size.

It is noted that a number of other Councils have already adopted a new clause within their standard LEPs to address similar split zone subdivision issues.

Clause 4.1AA Minimum subdivision lot size for community title schemes currently applies to all zones where the minimum lot size maps applies other than the E2 Environmental Conservation and E3 Environmental Management zones. This is considered problematic in that it does not restrict subdivision fragmentation of these environmental sensitive lands.

## **Site**

The proposal applies to the entire Newcastle LEP 2012 area, specifically to subdivision of all land containing split zoning which includes E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living zoned land.

The proposal in relation to subdivision lot size for community title schemes specifically relates to land within the E2 Environmental Conservation and E3 Environmental Management zones.

## Part 1 - Objectives or Intended Outcomes

- 1) To enable subdivision of lots that are within more than one zone and cannot be subdivided under Clause 4.1 while still protecting environmental attributes of the site.
- 2) To apply the minimum lot size maps to community title subdivision across all zones to which the maps apply.

## Part 2 - Explanation of Provisions

The planning proposal seeks to achieve the two objectives outlined in Part 1 above by two corresponding instrument amendments.

- 1) Minimum subdivision lot sizes for certain split zoned land

The proposed provision seeks to enable subdivision of lots that are within more than one zone and cannot be subdivided under Clause 4.1 and also cannot be subject to an exception to the lot size due to operation of Subclause 4.6)6).

An additional clause (below) is therefore proposed to enable subdivision to occur on the basis that the environmental land forms part of a lot within the residential, business or industrial zone. In this regard the environmental land would not be reduced in size and its future management rests with the owner of the allotment of which it forms part of. By requiring it to be part of a lot with a compliant area of residential, business or industrial land avoids the sterilisation of the land from any future development.

### 4.1B Minimum subdivision lot sizes for certain split zones

- (1) The objectives of this clause are:
  - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, and
  - (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development while protecting environmental attributes of the land.
- (2) This clause applies to each lot (an **original lot**) that contains:
  - (a) land in a residential, business or industrial zone, and
  - (b) land in Zone E2 Environmental Conservation, Zone E3 Environmental Management or E4 Environmental Living.
- (3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:
  - (a) one of the resulting lots will contain:
    - (i) land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and
    - (ii) all of the land in Zone E2 Environmental Conservation, Zone E3 Environmental Management or E4 Environmental Living that was in the original lot, and
  - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

For example:

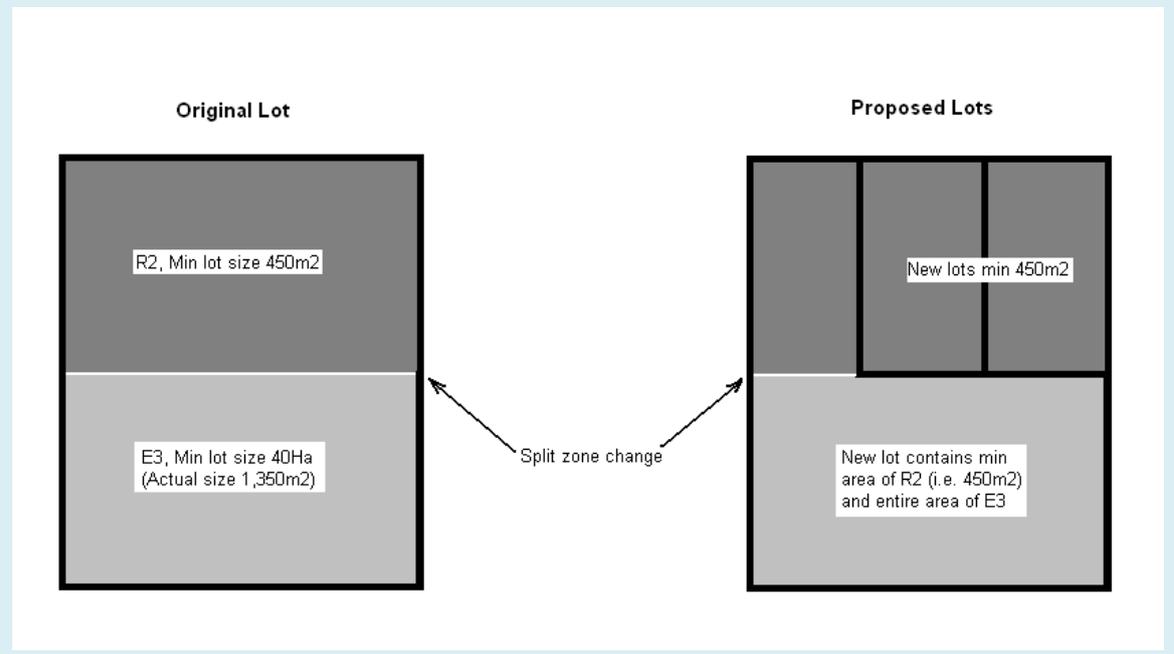
An applicant has a split zoned parcel of land of around 2,700m<sup>2</sup>. The front section of 1,350m<sup>2</sup> is zoned R2 Low Density Residential and the remainder of the site is zoned E3 Environmental Management.

The LEP, via Clause 4.1, provides for a minimum lot size of 450m<sup>2</sup> for the R2 Low Density Residential zone and 40Ha for the E3 Environmental Management zone.

The applicant proposes to subdivide the land into three lots. Two of the lots of a least 450m<sup>2</sup> will be located wholly within the R2 residential zoned portion of the site. The third lot is proposed to contain at least 450m<sup>2</sup> of R2 residential zoned land and the remainder of the site, being the E3 zoned land (i.e. total 1,800m<sup>2</sup>).

Under the existing instrument this would not be possible as the lot containing the E3 Environmental Management land will be below the minimum 40Ha, even though the environmental zoned land itself is not being subdivided. Clause 4.6)6) of the LEP prevents a variation to the minimum lot size in this circumstance.

Under the proposed amendment it would be possible to subdivide the residential zoned portion of the site but include the residual environmental zoned land in one of the lots. The requirement to retain a compliant area of residential zoned land along with the environmental zoned area ensures the viable use of the lot and its ongoing management responsibilities.



Should it be desired to have the residual environmental zoned land dedicated to Council than this could be achieved under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Under this policy subdivision is exempt development for the purpose of creating a public reserve or excising land that is, or intended to be, used for public purposes.

## 2) Minimum subdivision lot size for community title schemes

The use of community title schemes is another mechanism under the Newcastle LEP 2012 to address subdivision of split zoned properties. This is because under Clause 4.1AA the residual environmental land can be included under an association property lot which is excluded from the minimum lot size.

Clause 4.1AA Minimum subdivision lot size for community title schemes currently applies to all zones where the minimum lot size maps applies other than the E2 Environmental Conservation and E3 Environmental Management zones. This is considered problematic in that it does not restrict subdivision fragmentation of these environmental sensitive lands. The intention is that minimum lot sizes should be consistently applied to both Torrens Title and Community Title subdivision, other than community association lots.

It is proposed to amend subclause 4.1AA as follows:

### **4.1AA Minimum subdivision lot size for community title schemes**

- (1) The objectives of this clause are as follows:
  - (a) to achieve lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
  - (b) to ensure that lot sizes are sufficient to meet user requirements and to facilitate energy efficiency of the future built form.
- (2) This clause applies to a subdivision (being a subdivision that requires development consent) under the [Community Land Development Act 1989](#) of land in any of the following zones:
  - (a) Zone R2 Low Density Residential,
  - (b) Zone R3 Medium Density Residential,
  - (c) Zone R4 High Density Residential,
  - (d) Zone B1 Neighbourhood Centre,
  - (e) Zone B2 Local Centre,
  - (f) Zone B3 Commercial Core,
  - (g) Zone B4 Mixed Use,
  - (h) Zone B5 Business Development,
  - (i) Zone IN1 General Industrial,
  - (j) Zone IN2 Light Industrial,
  - (k) Zone IN3 Heavy Industrial,
  - (l) Zone E2 Environmental Conservation**
  - (m) Zone E3 Environmental Management**
  - (n) Zone E4 Environmental Living.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the [Community Land Development Act 1989](#)) is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.

An alternative means of achieving the objective is outlined under Part 3, Section 2 of this planning proposal and may provide for a simpler solution rather than amending Clause 4.1AA.

## Part 3 – Justification

### Section A - Need for the planning proposal

#### ***1. Is the planning proposal a result of any strategic study or report?***

No. The planning proposal is the result of the interpretation of Clause 4.1 along with Clause 4.6)6) and its unintended restriction on subdivision of split zoned land where the environmental zoned area is already below 40Ha. Likewise the proposed amendment to Clause 4.1AA is to address an anomaly to apply lot sizes consistently to community title schemes.

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

##### Subdivision of certain split zoned land

Yes, the inclusion of an additional clause for the subdivision of split zoned land is the best means of achieving the objective.

An alternative could be to remove minimum lot sizes for subdivision from the LEP. This is not considered appropriate as it would leave environmental land open to subdivision, compromising its environmental attributes.

Another alternative would be to remove the restriction of Clause 4.6 Exception to development standards as it applies to the subdivision of environmentally zoned land. Again this is not considered appropriate as it could place pressure on all environmentally zoned land to be subdivided through variations to minimum lot size.

The proposed new clause does not enable subdivision of environmental land but rather allows it to remain the same size and attached to an appropriately sized area of developable land.

##### Lot size for Community Title subdivision

While the suggested amendment to Clause 4.1AA Minimum subdivision lot size for community title schemes, is one means of achieving the objective it is not the only means.

The proposed amendment to Clause 4.1AA outlined under Part 2 of this proposal makes the minimum lot size maps apply within all zones to Community Title schemes consistent with minimum subdivision lot size for Torrens Title subdivision, as provided under Clause 4.1 Minimum subdivision lot size.

Given the intention to create consistency between lot size for both Torrens Title and Community Title schemes an alternative would be to use a single clause to apply minimum lot sizes to both.

This could be achieved through an amendment to Clause 4.1 Minimum subdivision lot size so that it also applies to Community Title schemes, as outlined below:

#### **4.1 Minimum subdivision lot size**

- (1) The objectives of this clause are as follows:
  - (a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
  - (b) to facilitate greater diversity in housing choice,
  - (c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,
  - (d) to ensure that the subdivision of land in Zone E4 Environmental Living:
    - (i) will not prejudice its possible future development for urban purposes or its environmental conservation, and
    - (ii) will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.
- (2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.
- (4) **This clause does not apply in relation to the subdivision of individual lots in a strata plan or to any lot comprising association property within the meaning of the [Community Land Development Act 1989](#).**
- (4A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).

If this option were used then Clause 4.1AA Minimum subdivision lot size for community title schemes would be redundant and could be deleted.

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

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

#### **Lower Hunter Regional Strategy (2006)**

The Lower Hunter Regional Strategy applies to the land. The aim of this Strategy is to ensure that adequate land is available to accommodate the projected housing and employment growth in the Hunter Region over the next 25 years.

The planning proposal is aimed at facilitating subdivision and development of suitably zoned land while protecting environmental zoned land and is therefore consistent with the Strategy.

### **4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

#### **Newcastle 2030 Community Strategic Plan**

Council adopted the Newcastle 2030 Community Strategic Plan in February 2011, as revised in 2013. The planning proposal primarily aligns to the strategic direction 'Open and Collaborative Leadership' identified within the Newcastle 2030 Community Strategic Plan.

Compliance with the LEP amendment process, in particular section 57 – community consultation of the *Environmental Planning and Assessment (EP&A) Act 1979*, will assist in achieving the strategic objective; "Consider decision-making based on collaborative, transparent and accountable leadership" and the identified strategy 7.2b, which states: "Provide opportunities for genuine and representative community engagement in local decision making".

#### **Newcastle Urban Strategy (NUS)**

The Newcastle Urban Strategy is based on the principles of Newcastle Urbanism. The aim of Newcastle urbanism is to:

*Provide greater choices to the community, in terms of access to housing, employment, transport, and social and cultural services, while offering reduced travel demand, improved air quality and greater identity for Newcastle, its city centre, and its district and neighbourhood centres.*

The planning proposal is consistent with these principles as it facilitates subdivision of land for housing supply.

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

Consistency (of the planning proposal) with State Environmental Planning Policies is outlined in the table below.

**Table 1 - Consideration of State Environmental Planning Policies**

<b>Name of SEPP</b>	<b>Applicable</b>	<b>Consistency</b>
State Environmental Planning Policy No 1 (Development Standards)	No	
State Environmental Planning Policy No 14 (Coastal Wetlands)	Yes	Much of the split zoned land occurs due to existence or proximity to the Hexham wetlands. The proposed amendments protect environmental zoned land from further subdivision development.
State Environmental Planning Policy No 15 (Rural Landsharing Communities)	No	
State Environmental Planning Policy No 19 (Bushland in Urban Areas)	No	
State Environmental Planning Policy No 21 (Caravan Parks)	No	
State Environmental Planning Policy No 26 (Littoral Rainforests)	No	
State Environmental Planning Policy No 29 (Western Sydney Recreation Area)	No	
State Environmental Planning Policy No 30 (Intensive Agriculture)	No	
State Environmental Planning Policy No 32 (Urban Consolidation)	No	
State Environmental Planning Policy No 33 (Hazardous and Offensive Development)	No	
State Environmental Planning Policy No 36 (Manufactured Home Estates)	No	
State Environmental Planning Policy No 39 (Spit Island Bird Habitat)	No	
State Environmental Planning Policy No 44 (Koala Habitat Protection)	No	
State Environmental Planning Policy No 47 (Moore Park Showground)	No	
State Environmental Planning Policy No 50 (Canal Estate Development)	No	
State Environmental Planning Policy No 52 (Farm Dams and Other Works in Land and Water Management Plan Areas)	No	
State Environmental Planning Policy No 55 (Remediation of Land)	No	
State Environmental Planning Policy No 59 (Central Western Sydney Economic and Employment Area)	No	
State Environmental Planning Policy No 62 (Sustainable Aquaculture)	No	
State Environmental Planning Policy No 64 (Advertising and Signage)	No	
State Environmental Planning Policy No 65 (Design Quality of Residential Flat Development)	No	
State Environmental Planning Policy No 70 (Affordable Housing (Revised Schemes))	No	

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy No 71 (Coastal Protection)	Yes	Much of the split zoned land occurs due to existence or proximity to the Hexham wetlands. The proposed amendments protect environmental zoned land from further subdivision development.
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	No	
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	No	
State Environmental Planning Policy (Infrastructure) 2007	No	
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	No	
State Environmental Planning Policy (Major Development) 2005	No	
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	No	
State Environmental Planning Policy (Rural Lands) 2008	No	
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	No	
State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007	No	
State Environmental Planning Policy (Western Sydney Parklands) 2009	No	
SEPP (State and Regional Development) 2011	No	

**6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

Consistency (of the planning proposal) with State Environmental Planning Policies is outlined in the table below.

**Table 2 - Consideration of Section 117 Directions**

S117 Direction	Applicable	Consistent
1. Employment and Resources		
1.1 Business and Industrial Zones	Yes	The planning proposal is consistent with relevant objectives in that it would facilitate the subdivision development of industrial or business zoned land where a split environmental zone also occurs. The proposal is otherwise consistent with the relevant requirements of the direction.

S117 Direction	Applicable	Consistent
1.2 Rural Zones	No	
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	
1.5 Rural Lands	No	
2. Environment and Heritage		
2.1 Environment Protection Zones	Yes	<p>The direction requires that a planning proposal includes provisions that facilitate protection and conservation of environmentally sensitive lands.</p> <p>The direction also requires the proposal to not reduce the environmental protection standards that apply to environmental land.</p> <p>The proposed instrument amendments do not enable further subdivision of environmental zoned land rather enables the orderly development of adjoining land.</p>
2.2 Coastal Protection	Yes	<p>The proposed amendments apply to environmentally zoned land within the coastal zone.</p> <p>The direction requires that a planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> <li>• <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997</i></li> <li>• <i>Coastal Design Guidelines 2003</i></li> <li>• <i>NSW Coastline Management Manual 1990.</i></li> </ul> <p>The existing LEP Clause 5.5 Development within the coastal zone specifically aims to implement the principles of the NSW Coastal Policy.</p> <p>The proposed instrument amendments will protect environmental land from subdivision. The planning proposal is therefore considered consistent with the principles of the NSW Coastal Design guidelines and NSW Coastline Management Manual 1990.</p>
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	

S117 Direction	Applicable	Consistent
<b>3. Housing, Infrastructure and Urban Development</b>		
3.1 Residential Zones	Yes	The proposed instrument amendment will facilitate subdivision containing split zones. This is considered consistent with the direction as it enables the intensification of urban land thereby making more efficient use of existing infrastructure and services.
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	No	
3.4 Integrating Land Use and Transport	Yes	<p>The proposal will create a provision relating to the subdivision of urban land and therefore the direction applies.</p> <p>The proposal will facilitate subdivision of urban land. This can increase density thereby supporting more viable public transport services.</p>
3.5 Development Near Licensed Aerodromes	No	
<b>4. Hazard and Risk</b>		
4.1 Acid Sulfate Soils	No	
4.2 Mine Subsidence and Unstable Land	No	
4.3 Flood Prone Land	No	
4.4 Planning for Bushfire Protection	No	
<b>5. Regional Planning</b>		
5.1 Implementation of Regional Strategies	Yes	Yes. The planning proposal is consistent with the Lower Hunter Regional Strategy and does not undermine achievement of its vision, land use strategy, policies, outcomes, or actions. Specifically the proposed amendments seek to facilitate the subdivision of urban land while still protecting environmental land.
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	

<b>S117 Direction</b>	<b>Applicable</b>	<b>Consistent</b>
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.8 Second Sydney Airport: Badgerys Creek	No	
6. Local Plan Making		
6.1 Approval and Referral Requirements	No	
6.2 Reserving Land for Public Purposes	No	
6.3 Site Specific Provisions	No	

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

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

No. It is noted the planning proposal protects environmentally zoned land from subdivision consistent with the existing instrument.

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

Subdivision of split zoned land which includes environmental zoned land raises the issue of future management of the environmental zoned area. The proposed new clause requires that any residual environmental zoned land be included within a lot that also contains a compliant lot size area of residential, commercial or industrial land rather than remaining on a lot by itself. This would ensure that the lot remains a viable lot for future development and ensures clear ownership and maintenance in the future. In some cases these lots may be dedicated to Council.

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

Yes. The planning proposal will facilitate the orderly subdivision development of urban land while protecting environmentally sensitive land.

## **Section D - State and Commonwealth interests**

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

The planning proposal is not site specific. Public infrastructure requirements would be considered at the time of a development application.

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

No State and Commonwealth public authorities have been consulted at this stage but will be carried out in accordance with the requirements of the gateway determination if required.

## **Part 4 – Mapping**

The Planning proposal does not seek to amend any maps within Newcastle LEP 2012.

## **Part 5 – Community Consultation**

The planning proposal is considered as low impact in accordance with the Department of Planning and Infrastructure's guidelines, 'A guide to preparing local environmental plans'. Hence it is proposed that the planning proposal will be publicly exhibited for a minimum 14 day period.

Any relevant agencies will be consulted in accordance with the requirements of the gateway determination.

## Part 6 – Project Timeline

The project is expected to be completed within nine months from Gateway Determination. The following timetable is proposed:

Task	Planning Proposal Timeline											
	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 14	Feb 14	Mar 14	Apr 14	May 14	Jun 14	Jul 14
Issue of Gateway Determination												
Prepare any outstanding studies												
Consult with required State Agencies												
Exhibition of planning proposal and technical studies												
Review of submissions and preparation of report to Council												
Report to Council following exhibition												
Planning Proposal sent back to Department requesting that the draft LEP be prepared												