

Planning Services

Gateway Determination Report

LGA	Port Stephens
RPA	Port Stephens Council
NAME	Rezone land at 9 Waropara Road and 5A and 5B Ferodale Road, Medowie, from part RU2 Rural Landscape to part R5 Large Lot Residential (4 homes)
NUMBER	PP_2017_PORTS_004_00
LEP TO BE AMENDED	Port Stephens Local Environmental Plan 2013
ADDRESS	9 Waropara Road and 5A & 5B Ferodale Road, Medowie
DESCRIPTION	Lot 110, DP 1082077 (16,612.357sqm) Lot 1, DP 711455 (20,800.827sqm) Lot 2, DP 711455 (20,246.470sqm)
RECEIVED	4 August 2017
FILE NO.	17/10928
QA NUMBER	qA416887
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 rezone two lots (Lot 1 and Lot 2, DP 711455) at 5B and 5A Ferodale Road, Medowie from RU2 Rural Landscape to R5 Large Lot Residential. Combined, the lots total approximately 4.1ha of land.

It also seeks to amend land use controls and associated maps for these lots and Lot 110, DP 1082077. The proposed Minimum Lot Size will be reduced from 20ha to 8,000sqm, for Lots 1 and 2 and from 1ha to 8,000sqm for Lot 110. The proposed rezoning will create an additional 4 lots.

The Proposal incorrectly identifies the site as including Lot 1 DP 1711455 and Lot 2 DP 1711455. The Proposal needs to correct this minor error and amend the DP number to DP 711455, prior to exhibition.

Site Description

It is located on the corner of Waropara Road and Ferodale Road, on the western fringe of the existing Medowie rural-residential area. It is within walking distance to the town centre, public transport and local schools.

The site is densely vegetated primarily with native trees (see below aerial).



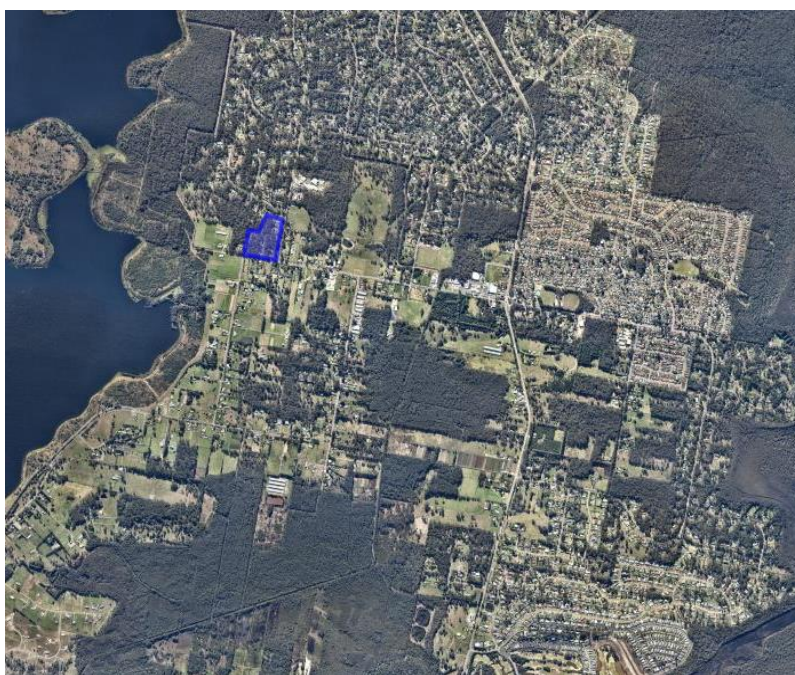
Subject site

Surrounding Area

Medowie has a distinct rural residential character, defined by interspersed vegetation. It is expected to grow from 10,300 people in 2016 to 17,500 people by 2036.

The site is on the western fringe of Medowie and is less than one kilometre east of Grahamstown Dam.

Land south and south-east of the subject site is zoned RU2 Rural Landscape and has a minimum lot size of 20ha. Small scale agriculture exists in this area. Land directly north and east of the site is zoned R5 Large Lot Residential, with a minimum lot size of 1ha. Land further north of the subject site around Kula Road is also zoned R5 Large Lot Residential but has a smaller minimum lot size of 4000sqm.



Surrounding area of subject site

Summary of Recommendation

The Planning Proposal should proceed with conditions.

PROPOSAL

Objectives or Intended Outcomes

The Planning Proposal seeks to rezone land from RU2 Rural Landscape to R5 Large Lot Residential to enable future residential development of the land. The Proposal intends to create four additional large residential lots to cater for the future growth of Medowie.

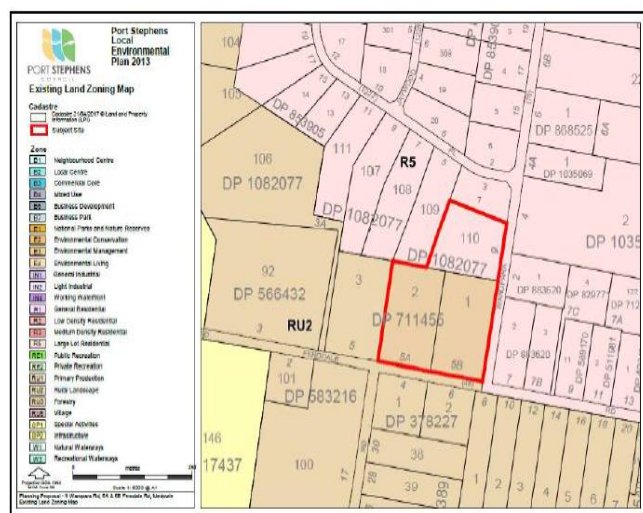
Explanation of Provisions

The objective of the Proposal will be achieved by:

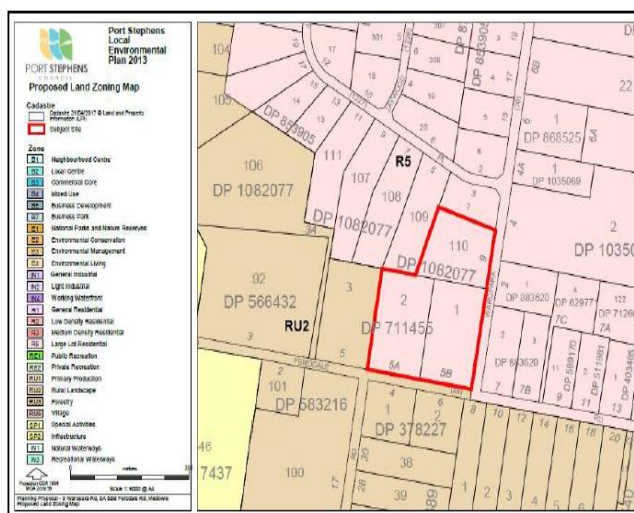
- Amending the Port Stephens LEP 2013 for Lots 1 and 2, DP 711455 (5A and 5B Ferodale Road) from RU2 Rural Landscape to R5 Large Lot Residential;
- Amending the Port Stephens LEP 2013 Lot Size Map for Lot 110, DP 1082077 (9 Waropara Road) and Lots 1 and 2, DP 711455 (5A and 5B Ferodale Road) from 20ha and 1ha to 8000sqm.

Mapping

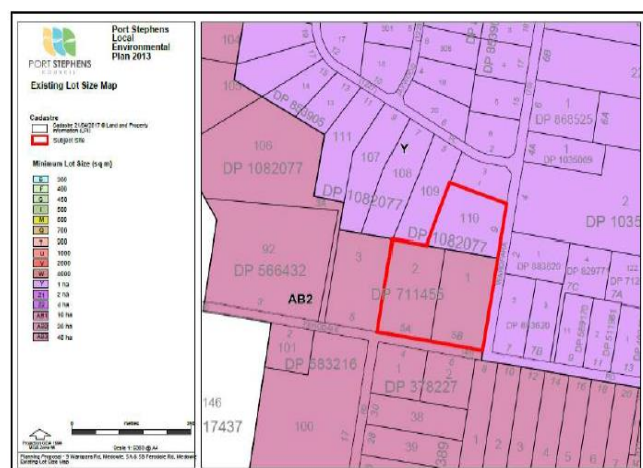
The Proposal seeks to amend the Land Zoning Map (LZN_004B) and the Lot Size Map (LSZ_004B). The following maps indicate the proposed changes.



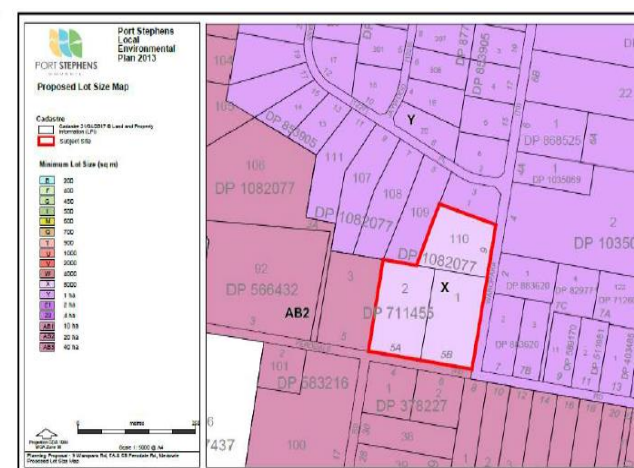
Existing zoning



Proposed zoning



Existing lot size



Proposed lot size

NEED FOR THE PLANNING PROPOSAL

The Planning Proposal will provide for additional residential land in an existing residential area where demand for residential land is projected to continue. The Planning Proposal is required to meet this demand and is the result of the Medowie Planning Strategy, which is the principal strategic land use plan for the area. The Planning Proposal is consistent with the Strategy and will achieve its intended outcomes by rezoning an existing urban area to permit denser residential development.

Whilst this Strategy has not been endorsed by the Department, the Proposal is generally consistent with the Hunter Regional Plan 2036, as it facilitates growth of greater housing choice with diverse lot types and sizes in an existing centre.

Although an intensification of use is proposed for the subject site, Council should investigate opportunities to further increase density on the subject site. This is in line with Direction 21 of the Hunter Regional Plan 2036 which seeks to create compact settlements. Provided that ecological and drainage constraints and land-use zone transitions can be appropriately resolved, Council should consider further decreasing the minimum lot size for the site to less than 8000sqm. The site is well-situated for more intensive development as it is near the shops and a school. Given its proximity to Medowie village centre and location in the existing urban footprint, subject site could support smaller lot sizes to capitalise on the opportunity for more intensive development close to the village centre, services and infrastructure.

It is considered that an amendment to the Port Stephens LEP 2013 is the most effective and timely method to achieve the objectives of the Proposal.

STRATEGIC ASSESSMENT

Regional / District

Hunter Regional Plan 2036

A key Direction of the Hunter Regional Plan 2036 is to create compact settlements. Direction 21 seeks to focus development in existing villages with established services and infrastructure. Action 21.4 outlines that development should focus on creating well-planned, functional and compact settlements that responds to settlement planning principles and that do not encroach on sensitive land uses, drinking water catchments or areas of high environmental values.

The Planning Proposal is consistent with the rural-residential and planning principles and character of Medowie however, it is recommended that a smaller minimum lot size is investigated for the subject site. As this would increase urban density in an area suitable for residential development.

Direction 22 'promote housing diversity', outlines that rural-residential development that expands rural villages should not impact on important agricultural land, biodiversity values or drinking water catchments. It should also contribute to conservation of biodiversity values or establishment of corridor linkages and not result in greater natural hazard risks.

The Proposal will not impact on strategic agricultural land. In relation to its impact on the Grahamstown drinking water catchment, natural hazards and biodiversity values, consultation with the appropriate authorities will need to occur to determine consistency with these outcomes.

Local

Integrated Strategic Plan (Port Stephens 2022)

The Proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022), which states that Council should provide for a range of lot sizes and housing types to respond to demographic needs and affordability.

Port Stephens Planning Strategy 2011-2036 (PSPS)

The Proposal is consistent with the directions adopted by the PSPS. The PSPS outlines that additional housing is required for the expected population growth of the area. Medowie is identified as a centre experiencing consistent growth, with demand for land expected to continue. There is limited infill potential in Medowie and the PSPS estimates that infill locations in Medowie will only yield approximately 63 new dwellings between 2011 – 2036. It is understood that Council is currently reviewing the PSPS.

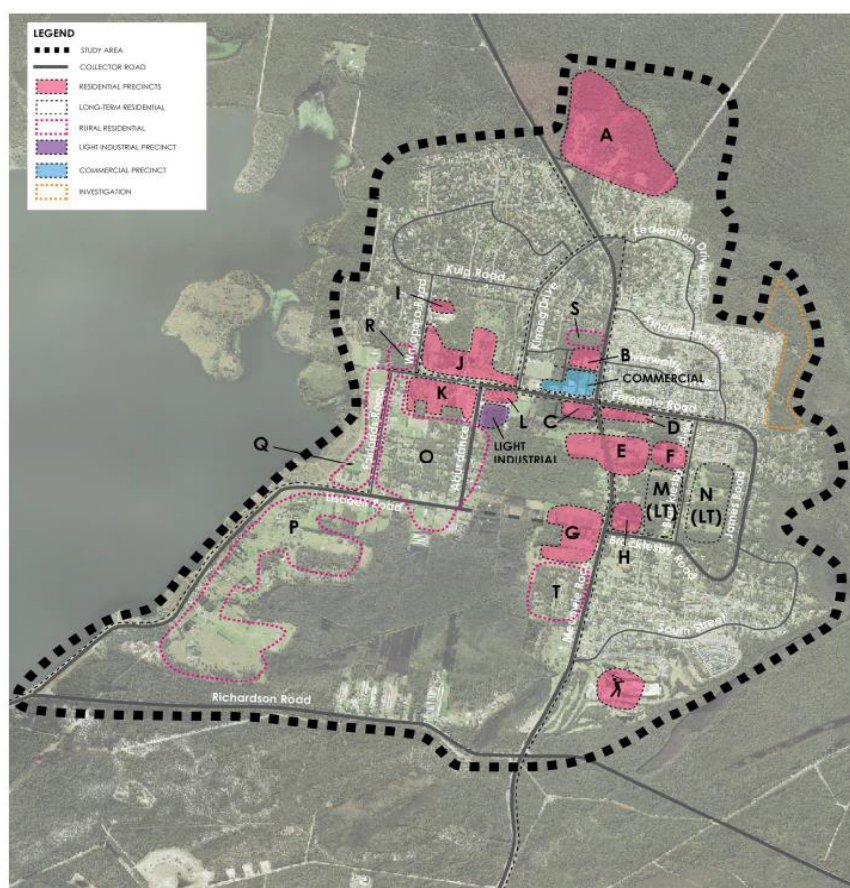
Medowie Planning Strategy

The Medowie Planning Strategy has not been endorsed by the Department.

The Proposal is generally consistent with the Strategy's vision statement, being:

'Medowie is a place of tall trees besides the water of Grahamstown Dam with a rural residential character, with a plan to accommodate and coordinate future growth with quality community and recreation facilities, good transport infrastructure, and involves the community in its implementation.'

The subject site is identified within the Strategy as a small 'Precinct R' rural residential site with an 8,000sqm minimum lot size (see below). It is not identified as being within the Strategy's wildlife corridors or the Grahamstown Dam drinking water catchment.



Planning Precincts – Medowie Planning Strategy

The Strategy outlines the key determinants to the identification of the rural residential land (which includes Precinct R), being:

- That it is land adjoining existing rural residential areas;
- Land that contributes to the semi-rural setting of Medowie;
- Land that is subject to a relatively high level of fragmentation;
- Land in areas that comprise vegetation and is subject to various constraints under policy and legislation (e.g. Port Stephens Comprehensive Koala Plan of Management); and
- Land that is already zoned R5 Large Lot Residential.

Although it is identified as future rural residential land, the subject site is ideally situated for more intensive development with smaller minimum lot size controls than those proposed. Given the constraints to development in Medowie, the site's location in the existing urban footprint and its proximity to the Medowie commercial centre, more intensive development of the site is desirable. Land to the south of the subject site is also identified in the Strategy as being future rural residential land. Future development of this site also provides opportunities to increase urban density in a location close to the Medowie commercial centre.

Council is proposing create a new minimum lot size under the LEP for the subject site of 8000sqm, however given the site's location and relationship to future urban land to the south, there is an opportunity to more intensively develop this area of Medowie. By applying an existing minimum lot size of 4000sqm to the subject site, development would still be in keeping with the rural residential character of Medowie and the vision of the Medowie Planning Strategy. Land further north of the subject site in the Kula Road locality has a minimum lot size of 4000sqm but maintains the character of Medowie.

Concerns regarding the proposed R5 Large Lot Residential zone, its boundaries and associated land use controls were raised with Council. Council provided additional information on 15 September 2017, outlining the reasons for Precinct R's inclusion in the Medowie Planning Strategy and why its boundary is delineated as it is, including that:

- land further west of the subject site drains into the Grahamstown Dam;
- the subject site is a discrete precinct, separate from Precincts O and Q to the south;
- lots further north of the subject site in the Kula Road area have actual lot sizes of around 8000sqm.

Following further studies and the resolution of development constraints associated with the site (ecology, drainage etc), it is recommended that Council consider whether the site may be suitable for more intensive residential development and if so, propose an alternative zone and land use controls.

Section 117(2) Ministerial Directions

Council has identified a number of s 117 Directions as being relevant to the Proposal. Further analysis is provided below for those Directions where additional discussion or work is required before consistency can be determined or where the Proposal is inconsistent.

1.2 Rural Zones and 1.5 Rural Lands

The Planning Proposal seeks to rezone rural land to residential land. The objective of these Directions is to protect the agricultural production value of rural land. In this regard, the Planning Proposal is inconsistent with the Directions. There is no recent history of agricultural enterprise on the site, nor is there agriculture occurring on adjoining RU2 Rural Landscape sites. Inconsistency with these Directions can be justified and is of minor significance on the basis that a residential outcome for the site is supported and agricultural

enterprise is unlikely to be viable due to the size of the site, its proximity to existing residential areas and environmental factors.

2.1 Environment Protection Zones

Whilst the Planning Proposal is not proposed on E-zoned land, discussion of this Direction is relevant as it aims to protect and conserve environmentally sensitive areas. Given the site contains environmental values, is adjacent to preferred koala habitat and is mapped as 'Preferred Link over Marginal Habitat' and 'Preferred 100m Buffer over Marginal Habitat', further consideration of this Direction is necessary. Studies need to determine the environmental values present on the site and consultation with OEH is required before consistency with this Direction can be determined. Adequate biodiversity offsets need to be established through this process.

2.3 Heritage Conservation

No information has been provided regarding the potential heritage significance of the site. It is recommended that an assessment of the site, in consultation with the Local Aboriginal Land Council, should occur to assist in determining consistency with Direction 2.3.

3.1 Residential Zones

The Planning Proposal is inconsistent with this Direction as it does not ensure that new housing has appropriate access to infrastructure services or contain an express requirement that residential development is not permitted on the subject site until it is adequately serviced.

Advice from Hunter Water Corporation (HWC) provides that whilst the site does not drain directly into the Grahamstown Dam, water quality remains an issue due to the site's proximity to the drinking water supply. Notwithstanding serviceability requirements under clause 7.6 of the Port Stephens LEP, further consultation with HWC is required regarding water, sewerage and drainage serviceability. Once HWC provides additional advice, consistency with this Direction can be determined.

This Direction also aims to provide for future housing needs, encourage a variety of housing types, make efficient use of existing infrastructure and services and to minimise the impact of residential development on the environment. Although the Proposal is decreasing the minimum lot size of the subject site and providing for future housing needs, further investigation as to the most appropriate density for the subject site should be undertaken to best utilise developable land within the existing urban footprint. Consistency with this Direction will be determined after Council considers whether the site may be suitable for more intensive residential development.

3.5 Development Near Licensed Aerodromes

Council has not addressed this Direction or indicated whether Medowie is in the vicinity of the RAAF Base and bombing range. The subject land is affected by the ANEF 2025. Consultation with the Department of Defence is recommended to determine consistency with this Direction.

4.1 Acid Sulfate Soils

This Direction requires an acid sulfate soils (ASS) study to be undertaken when a Planning Proposal will result in an intensification of land uses. As this may occur for the subject site and no study is proposed, the Proposal is inconsistent with this Direction. The Acid Sulfate Soils Map indicates that the site contains class 5 soils. ASS may be adequately assessed at the DA stage through the existing LEP ASS provisions. Inconsistency with this Direction is of minor significance.

4.4 Planning for Bushfire Protection

The site is mapped as bushfire prone. Consultation with RFS is required before consistency with this Direction can be determined.

5.1 Implementation of Regional Strategies

The Planning Proposal identifies this Direction as being relevant, however amended Section 117 Directions were published on the Department's website on 13 January 2017. The amendment removes the need for the Planning Proposal to consider Direction 5.1. Instead, the Proposal should consider consistency against Direction 5.10 (below).

5.10 Implementation of Regional Plans

The Proposal is consistent with the Hunter Regional Plan 2036 as it identifies Medowie as a proposed urban area. The Proposal provides greater housing choice and facilitates growth in an existing centre. The Planning Proposal should be updated to consider consistency against this Direction, rather than Direction 5.1 Implementation of Regional Strategies.

State Environmental Planning Policies

SEPP 44 – Koala Habitat Protection

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) is applied in Port Stephens LGA for the purposes of implementing SEPP 44. The site is densely vegetated by native trees, however the under-scrub vegetation has been cleared. On the Koala Habitat Planning Map, the site is predominantly mapped as 'Preferred Link over Marginal Habitat'. Small sections of the site are mapped as 'Link over Cleared Land'. The north-western corner of the site is mapped as 'Preferred 100m Buffer over Marginal Habitat', acting as a buffer for the adjacent 'Preferred Koala Habitat' to the north west of the subject site. Preferred Koala Habitat is the most important category of koala habitat in the Port Stephens LGA and the CKPoM recommends no development of this habitat or its defined habitat buffers.

Appendix 2 of the CKPoM outlines the Performance Criteria for Rezoning Requests. Given the current lack of information accompanying the Proposal on the future subdivision concept plan and the fact that to date, no targeted koala surveys have been undertaken for the subject site, the Planning Proposal is inconsistent with the majority of the Performance Criteria.

Further information is required to support the rezoning Proposal, including an investigation of the site in accordance with the Guidelines for Koala Habitat Assessment in Appendix 6 of the CKPoM. Consultation with OEH is also required to determine consistency with the SEPP.

SEPP 55 – Remediation of Land

The Proponent has not identified or raised any evidence of contamination at the site however, a preliminary assessment should be undertaken post Gateway to demonstrate the suitability of the land for residential development.

Rural Lands SEPP (2008)

This SEPP applies because two of the lots within the site are proposed to be rezoned from RU2 Rural Landscape to R5 Large Lot Residential. These lots currently serve no agricultural purpose. Future use of the land for agricultural purposes is constrained by its limited size, existing proximity to a residential area and environmental constraints. The Proposal is consistent with a number of the Rural Planning Principles and Rural Subdivision Principles as it provides for rural lifestyle opportunities, minimises rural land fragmentation

and minimises the potential for land use conflict. Furthermore, development of the site would not limit agricultural activity on the small adjoining RU2 lots. Residential development of the site is supported. The Planning Proposal's inconsistency with the SEPP is justified.

SITE SPECIFIC ASSESSMENT

Social

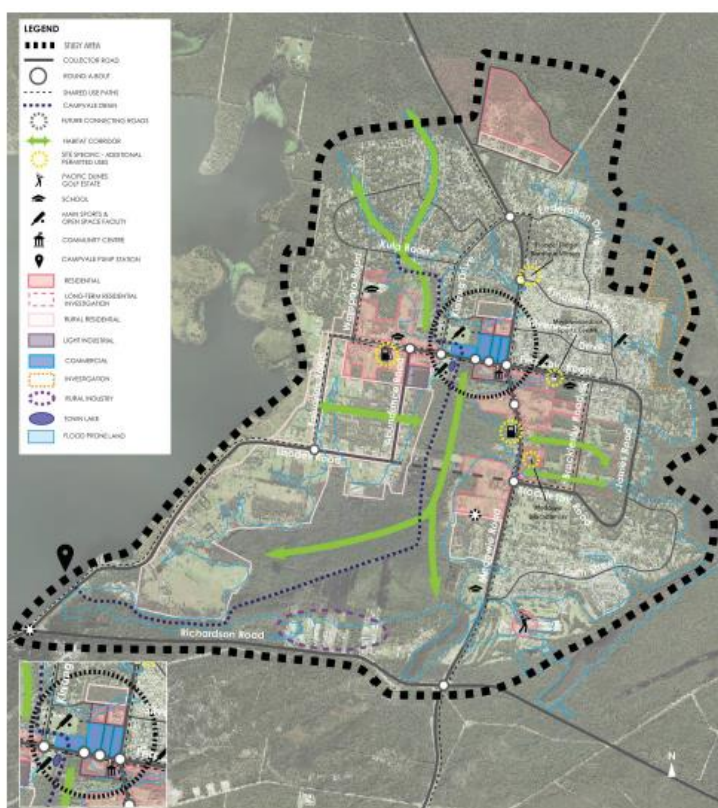
The Proposal will have generally positive social implications through the provision of an estimated six additional residential lots near existing services, roadways, public transport and Medowie Town Centre.

Environmental

Ecology

The site contains native vegetation and Council advises that it forms part of a fragmented biodiversity corridor of linking local stepping stone vegetation to the south. The Koala Habitat Planning Map indicates the importance of the site as a vegetation link over marginal koala habitat. It also shows its proximity to core koala habitat.

Whilst the Proposal is not within a mapped wildlife corridor contained within the Medowie Planning Strategy, it does comprise of vegetated land. One of the key principles of the Strategy is to improve or maintain habitat and key corridors to protect the koala population. The Strategy adopts wildlife corridors based predominantly on koalas and koala movement, rather than all flora and fauna or Endangered Ecological Communities. This provides protection for koala habitat, however compromises the Strategy's ability to respond to and protect other habitats not contained within the mapped koala movement corridors.



Wildlife corridors – Medowie Planning Strategy

The impacts on ecology and biodiversity are currently unknown, as no ecological report or target koala surveys have been undertaken for the site. Further environmental studies and consultation with OEH is proposed.

Grahamstown Dam Drinking Water Source

The site is located within the Grahamstown Catchment Area as defined within the Hunter Water Regulation 2015, which protects the Grahamstown Dam drinking water source. It is also identified in the Drinking Water Catchment Map in the Port Stephens LEP 2013. Due to the sensitivity of the drinking water catchment and the proximity of the subject site to Grahamstown waters, advice from HWC is requested to determine potential impacts and suitable management measures. The preliminary stormwater plan that has been prepared and water quality modelling should demonstrate that the Proposal has a neutral or beneficial effect.

Economic

There will be a minor increase in for goods and services due to the additional residential dwellings.

CONSULTATION

Community

Council has not specified how long it proposes to exhibit the Proposal. A 28 day public exhibition period in accordance with Council's exhibition guidelines is recommended, as the Proposal presents issues with regards to infrastructure servicing.

Agencies

Council is to consult with the following agencies and public authorities:

- Office of Environment and Heritage
- Hunter Water Corporation
- Department of Defence
- Local Aboriginal Land Council
- Rural Fire Service

TIMEFRAME

Council has provided an indicative completion timeframe of 9 months. A 12 month timeframe is considered appropriate to resolve drainage and ecology issues.

DELEGATION

Council has requested delegation for the Proposal. This is appropriate given the local significance of the rezoning.

CONCLUSION

The Planning Proposal should proceed with conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree any inconsistencies with Section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 4.1 Acid Sulfate Soils are justified or are of minor significance; and
2. Note that consistency with Section 117 Directions 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.5 Development Near Licensed Aerodromes and 4.4 Planning for Bushfire Protection is unresolved and will require further information and 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. Following appropriate studies, Council is to consider whether the site may be suitable for more intensive residential development and if so, propose alternative zoning and development standard controls.
2. Prior to undertaking community consultation, Council is to resubmit the Planning Proposal and seek approval from Newcastle Office of the Department of Planning and Environment that the updated Planning Proposal:
 - a) responds adequately to comments from the Office of Environment and Heritage regarding S 117 Direction 2.1 Environment Protection Zones and Direction 2.3 Heritage Conservation, particularly regarding the suitability of environmental and heritage studies carried out and the adequacy of any proposed biodiversity offsetting arrangements;
 - b) addresses the inconsistency with S 117 Direction 3.1 Residential Zones in regards to infrastructure services and responds adequately to comments from Hunter Water Corporation in regards to water, drainage and sewer infrastructure with appropriate studies and development plans;
 - c) responds adequately to comments from the Commonwealth Department of Defence in regards to S 117 Direction 3.5 Development Near Licensed Aerodromes;
 - d) responds adequately to NSW Rural Fire Service comments in regards to S 117 Direction 4.4 Planning for Bushfire Protection;
 - e) removes reference to S 117 Direction 5.1 Implementation of Regional Strategies and instead refers to S 117 Direction 5.10 Implementation of Regional Plans; and
 - f) correctly identifies the Lot and DP numbers for the subject site.
3. Arrangements for potential biodiversity offsets should be confirmed by consultation with OEH prior to the making of the Plan.
4. The Planning Proposal should be made available for community consultation for a minimum of 28 days.
5. Consultation is required with the following public authorities:
 - Hunter Water Corporation
 - Office of Environment and Heritage
 - NSW Rural Fire Service
 - Australian Department of Defence
 - Local Aboriginal Land Council
6. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
7. Given the nature of the Planning Proposal, Council should be authorised to exercise delegation to make this plan.



12/10/2017

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