

Planning Services

Gateway Determination Report

LGA	Port Stephens
RPA	Port Stephens Council
NAME	Boundary adjustment between E2 and SP2 zoned land (0 homes, 0 jobs)
NUMBER	PP_2017_PORTS_006_00
LEP TO BE AMENDED	Port Stephens LEP 2013
ADDRESS	100 Salamander Way, Salamander Bay
DESCRIPTION	Lot 21 DP 1044009 and Lot 23 DP 1044009
RECEIVED	22 November 2017
FILE NO.	OBJ17/12892
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 adjust the zone boundary between the E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre land at the 100 Salamander Way, Salamander Bay. The adjustment would rezone 0.11ha of E2 land to SP2 and 0.15ha of SP2 land E2. Council has requested that the amendment occur by way of a s73A amendment.

The planning proposal results from a development application (DA) modification that is currently being assessed by Council relating to a car park and the timing of retiring biobank credits. The car park affects E2 zoned land and its impacts are to be offset through retiring biobank agreement credits.

The DA modification is affected by the transitional arrangements associated with the new biodiversity legislation. As a result, and due to some of the E2 zoned land being affected by the DA, separate approval is required under the *Native Vegetation Act 2003* and so OEHL is unable to issue a biobank statement for the DA.

The rezoning proposal therefore would enable OEHL to approve the biobanking statement by rezoning the E2 to SP2 and allow the DA to progress. It would also ensure that the zoning aligns with the OEHL land survey undertaken to determine the Biobank Agreement boundary. Presently, the zone boundary is inconsistent and the proposal will correct this before the credits are retired.

Council is the owner of the land subject to the DA modification.

Site Description

The site is made up of two lots which are currently zoned a mix of RE1 Public Recreation, E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre as seen in Figure 1. Figure 3 shows the biobank area and the proposed zone boundary adjustment.

Most of the site is vegetated with some cleared areas on the north-east, the north and the south-west. A fire trail traverses the south-eastern portion of the site.

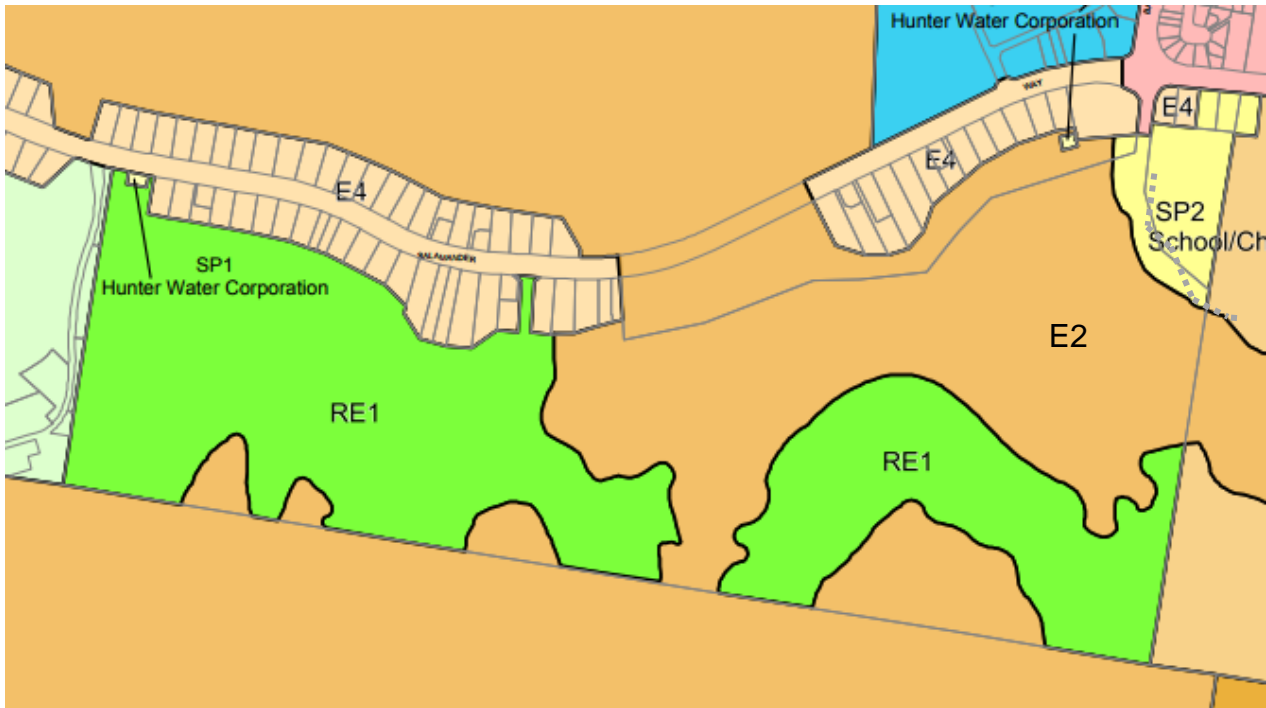


Figure 1: Land Zoning Map.

The planning proposal applies to a small portion of the site, refer to Figure 5. Most of the site is subject to a Biobanking Agreement and a small portion of the land, not affected by the Agreement, is subject to a Council DA. Figure 2 shows the Biobank area outlined in red and the DA area outlined blue broken line.

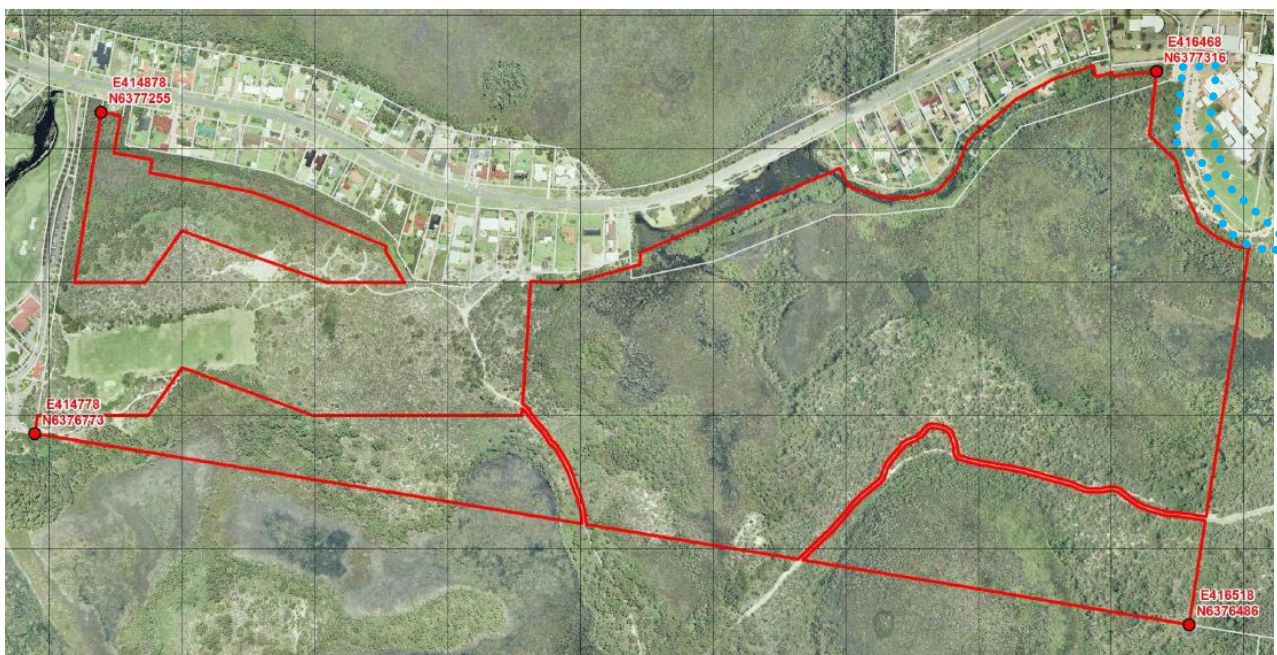


Figure 2: Aerial of Biobank Agreement and land subject to Development Application.

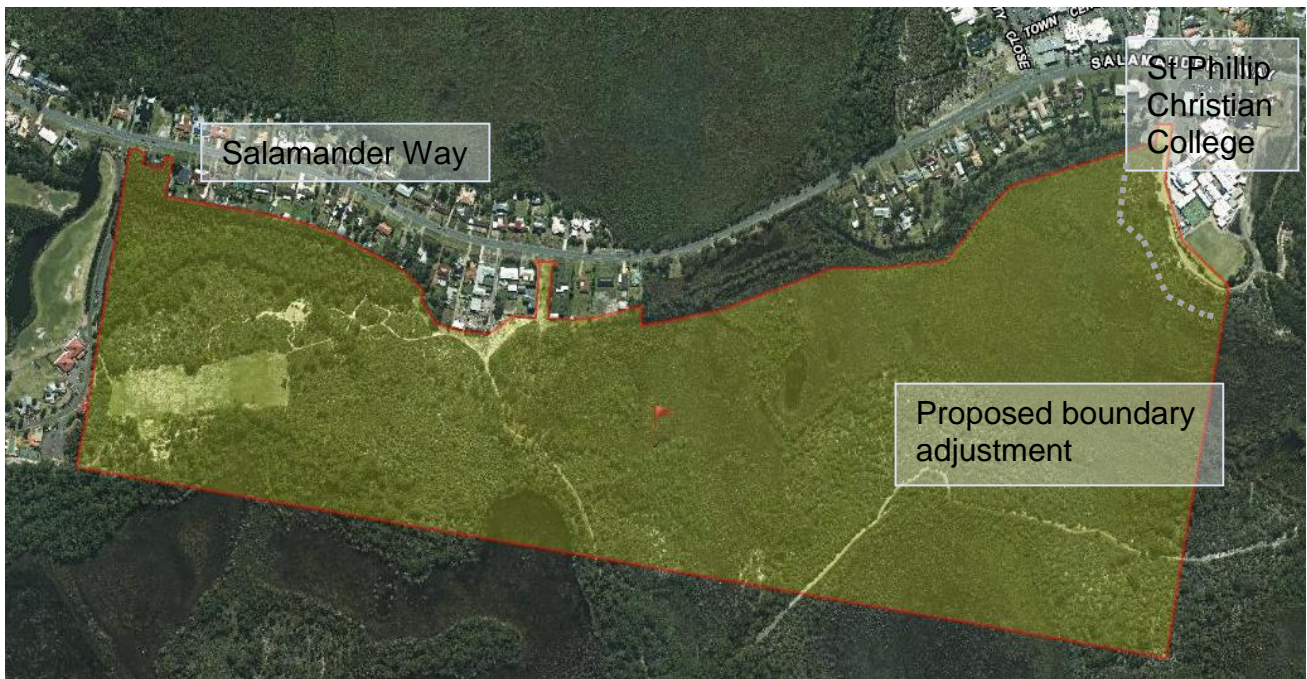


Figure 3: Aerial of subject site.

Surrounding Area

The site is located between Salamander Bay and Nelsons Bay on Salamander Way. Most of the residential development in the area is located to the north-east and north-west.

A small portion of residential development is located directly north of the site on Salamander Way. The Salamander Bay town centre is located to the north-east on the adjacent side of Salamander Way. Figure 4 shows the site within the locality.

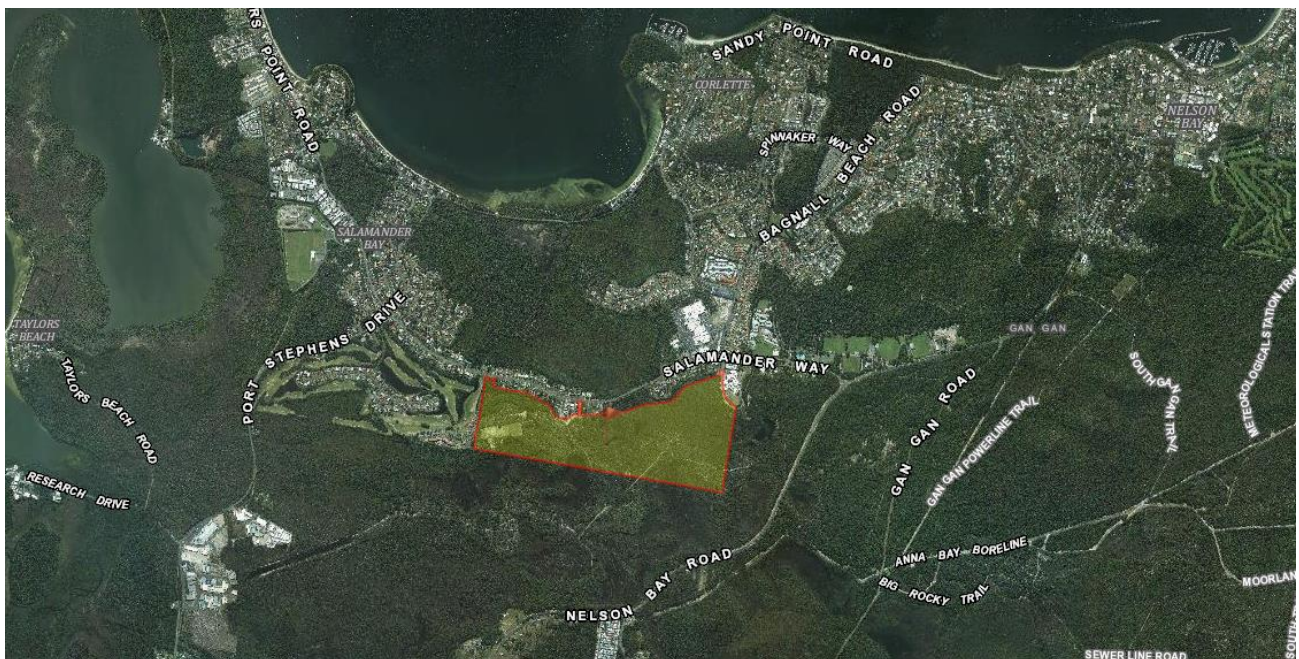


Figure 4: Aerial of locality.

Summary of Recommendation

The planning proposal should proceed subject to conditions. In summary, the planning proposal is supported and removal of the environmental zone can be justified as the E2 land was not identified by OEH for protection under the Biobank Agreement, which Council

state more accurately reflects the high biodiversity value land than the existing PSLEP 2013 zone boundary. It is considered that the planning proposal would be generally low impact as it applies to a small portion of the site compared with the land being protected under the Agreement.

However, progressing the proposal using Section 73A as requested by Council is not supported. The proposal is a spot rezoning which amends SP2 and E2 zoned land. It should be subject to community consultation and the standard planning proposal process.

PROPOSAL

Objectives

The planning proposal's stated objectives are to:

- Facilitate retirement of the biobank credits associated with the Biobank Agreement; and
- Provide greater consistency with the boundary of the registered Biobank Agreement and the OEH land survey.

It should be noted that although Council's ultimate objective is to retire the biobank credits, the planning proposal would also facilitate the approval of the Biobank Statement relating to a DA modification, thereby allowing the DA modification to progress.

Explanation of Provisions

The planning proposal seeks to:

- Rezone 0.11ha of E2 Environmental Conservation zoned land to SP2 Infrastructure: School / Child care centre;
- Decrease the minimum lot size from 40ha to 500sqm for the E2 land being rezoned to SP2;
- Rezone 0.15ha of SP2 Infrastructure: School / Child care centre zoned land to E2 Environmental Conservation; and
- Increase the minimum lot size from 500sqm to 40ha for the SP2 land being rezoned to E2.

Mapping

The maps provided in the proposal are adequate for the Gateway assessment. The proposal would amend two LEP map layers, the Land Zoning Map and the Lot Size Map.

Figure 5 shows the proposed zoning amendment and Figure 6 shows the LEP amendment directly correlates with the Biobank Agreement boundary. Figure 7 shows the proposed minimum lot size amendment would be consistent with the adjoining land.

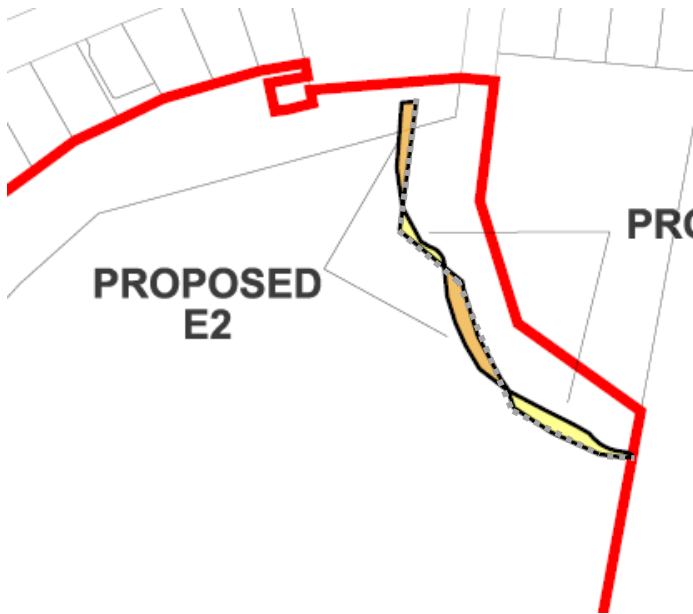


Figure 5: Proposed change to Land Zoning Map.



Figure 6: boundary of Biobank Agreement.

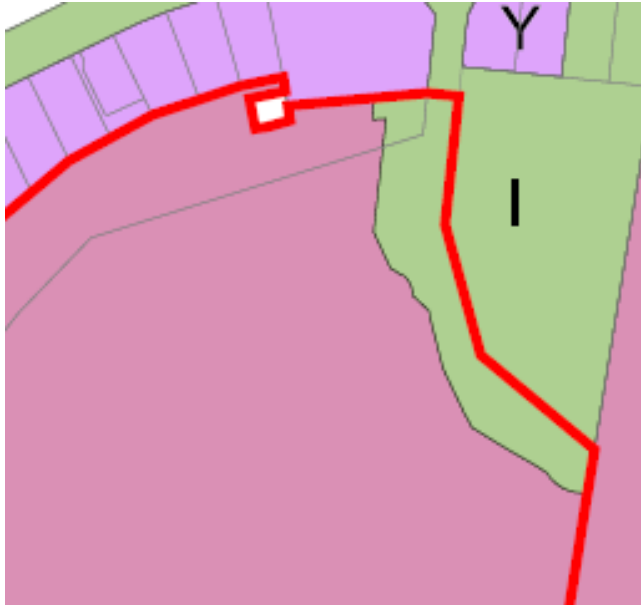


Figure 7: Proposed Lot Size Map.

NEED FOR THE PLANNING PROPOSAL

The planning proposal was not the result of a specific strategic study or strategy. It was initiated by Council to facilitate approval of the Biobank Statement, allow the DA to progress and allow the biobank credits to be retired with a zone consistent with the conservation outcome envisaged for the land. The planning proposal seeks to amend the zone boundary to be consistent with the OEH biobank agreement site survey.

The SP2 zoning is no longer required for part of the site as that land is already subject to a Biobanking Agreement and is therefore protected in perpetuity under the terms of that Agreement, and the credits can be retired regardless of the zone. It is considered that the SP2 zone is redundant as the Biobank Agreement restricts development permitted on the land. The proposed E2 zone is supported as it is consistent with the Biobank boundary and objectives.

The E2 land proposed to be rezoned is not subject to the Biobank Agreement which is underpinned by the OEH land survey that identified land with high biodiversity values to be

protected under that Agreement. Council notes that the land survey more accurately identified the boundary between environmental and infrastructure land than the PSLEP 2013 zone boundary, as such the E2 zone is no longer required. Council seek to rezone land from E2 to allow the biobank credits to be retired and to protect a larger area through the Biobank Agreement.

It is considered that the E2 zoning is no longer required for the subject land. As such the rezoning should be supported as the land is on the fringe of SP2 developed land, the E2 land was not recognised as high biodiversity land in the OEH land survey and the land was not included in the Biobank Agreement. Further, the rezoning can be supported because OEH is aware of and generally supports the proposal as it would allow the biobank credits to be retired the Biobank area to be protected in perpetuity.

This planning proposal is the best way to achieve the intended outcome as it would facilitate the Biobank Statement, the DA and the allow the biobank credits to be retired.

Suitability of using section 73A

Council has sought to expedite the LEP amendment process under Section 73A. However, the assessment indicates the proposal is inconsistent with Section 73A and does not meet the requirements of the Department's Planning Circular guidelines for Minor Amendments to local environmental plans using Section 73A.

To be assessed under Section 73A the proposal should be consistent with clause (1)(a) or (b). The following is an assessment of the proposal against Section 73A:

(a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,

The proposal is not considered to be consistent with clause (1)(a) as it is not an obvious error in the written instrument or PSLEP 2013 maps.

(b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature,

The proposal is a spot rezoning and is not the result of a strategic study or strategy. The planning proposal applies to 0.26ha of vegetated land. The proposal is not considered to be of consequential or minor nature.

Finally, the Department's Planning Circular for *Minor amendments to local environmental plans using Section 73A* notes that amendments to an LEP zone boundary would not be permitted under Section 73A, however amendments would need to be considered on the facts of each individual case. It is considered that the LEP amendment should not occur under Section 73A and that the standard planning proposal process is appropriate in this instance. Therefore, the Gateway should require Council to prepare a planning proposal for this LEP amendment.

STRATEGIC ASSESSMENT

Regional

Hunter Regional Plan 2036 (HRP)

The planning proposal did not identify consistency with the HRP. However, the proposal is generally consistent with Goal 2 which aims to protect and enhance the biodiversity-rich natural environment. The proposal would contribute to achieving the objectives of Goal 2 and Direction 14 by protecting the natural environment.

Consistency with HRP should be addressed in a revised planning proposal.

Local

The planning proposal did not identify consistency with any local strategies. Consistency with any relevant local strategies should be addressed in a revised planning proposal.

Section 117(2) Ministerial Directions

The planning proposal did not identify any relevant Section 117 Directions. However, the following Section 117 Directions may apply to the planning proposal.

- 2.1 Environmental Protection Zones;
- 4.4 Planning for Bushfire Protection; and
- 5.10 Implementation of Regional Plans.

Council will need to address consistency with any relevant Directions in a revised planning proposal and seek the Secretary's agreement to any inconsistencies.

State Environmental Planning Policies

The planning proposal did not identify relevant SEPPs. However, the following SEPPs are may apply to the planning proposal:

- SEPP 14 - Coastal Wetlands;
- SEPP 44 – Koala Habitat;
- SEPP 71 – Coastal Protection; and
- Draft Coastal Hazards.

Consistency with any relevant SEPPs should be addressed in a revised planning proposal.

SITE SPECIFIC ASSESSMENT

Social

The proposed amendment is minor and would not have a significant negative impact on the community or neighbouring properties.

Environmental

The proposed amendment would provide a zoning that more accurately reflects the outcome of OEH's land survey undertaken to determine the Biobank Agreement boundary.

The planning proposal would allow the biobank credits to be retired from the market and ensure the environmental land is protected.

Although, the proposal would permit clearing under Council's current DA, the credits from the Biobank Agreement would be used to offset this development. As such, it is considered that the proposal would not result in a significant negative impact on the environment.

Economic

The proposed amendment is minor and no adverse economic impacts are anticipated.

CONSULTATION

Community

The planning proposal did not identify any community consultation. However, due to the low impact of the proposal a minimum 14 day exhibition period is recommended.

Agencies

No agency consultation is required as the amendments are considered to be low impact and reflect an existing biobank agreement.

TIMEFRAME

A timeframe of 3 months is sufficient in this case.

DELEGATION

Council has requested the use of plan making delegation. The planning proposal should be delegated to Council to finalise as the amendment is of low impact.

CONCLUSION

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

- The planning proposal would amend the zone boundary to be consistent with the OEH biobank agreement site survey that relates to the site.
- The proposed minimum lot size standards that would apply are consistent with those that apply to those zones in the locality.
- The proposal would ultimately allow the biobank credits to be retired from the market, protecting that land in perpetuity.
- The planning proposal is unlikely to have a negative social, environmental or economic impact.
- The planning proposal is consistent with the Hunter Regional Plan 2036 because it would provide protection for the natural environment.
- Use of s73A is not supported because the proposal is for a spot rezoning that does not correct an obvious error or something that is consequential or minor in nature. The standard planning proposal process should be followed.

RECOMMENDATION

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

1. Prior to community consultation Council is to provide a planning proposal consistent with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. 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).
4. The timeframe for completing the LEP is to be **3 months** from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.
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.



19/12/2017

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