



Planning Proposal – Proposed Amendment to Port Stephens Local Environmental Plan 2013

Proposal to rezone the subject land to allow residential development and environmental management of land at Medowie

Lot 1 DP 567481 (730 Medowie Road)
Lot 2 DP 567481 (722 Medowie Road)
Lot 7 DP 855814 (714 Medowie Road)
Lot 8 DP 855814 (702 Medowie Road)
Lot 9 DP 855814 (688 Medowie Road)
Lot 199 DP 17437 (733 Medowie Road)
Lot 200 DP 19739 (717 Medowie Road)

August 2017

PART 1 – Objective of the proposed local environmental plan

The objectives of the planning proposal (the proposal) are to:

- Rezone the subject land to enable residential development and environmental conservation generally in accordance with the Medowie Planning Strategy; and
- Ensure that future residents are not exposed to risk of unacceptable odour impacts from a poultry farm operating on Lot 199 DP 17437 (733 Medowie Road).

PART 2 – Explanation of the provisions to be included in proposed LEP

The objectives of the proposal will be achieved by:

- Amending the *Port Stephens Local Environmental Plan 2013* Land Zoning Map in accordance with the proposed Draft Land Use Zone Map at **Attachment 1**.
- Amending the *Port Stephens Local Environmental Plan 2013* Lot Size Map in accordance with the proposed Draft Lot Size Map at **Attachment 2**.
- Amending the *Port Stephens Local Environmental Plan 2013* Height of Buildings Map in accordance with the proposed Draft Height of Buildings Map at **Attachment 3**.
- Amending the *Port Stephens Local Environmental Plan 2013* Urban Release Area Map in accordance with the proposed Draft Urban Release Area Map at **Attachment 4**.
- Inserting an additional Clause to Part 7 *Additional local provisions* as follows:

"Clause 7.20 Development at Medowie Road, Medowie

(1) This clause applies to land at Medowie Road, Medowie, being Lots 200 DP 19739, Lot 199 DP 17437, Lots 1-2 DP 567481 and Lots 7-9 DP 855814.

(2) Despite any other provision of this Plan, development consent must not be granted to development on the land to which this clause applies unless the consent authority is satisfied that arrangements, acceptable to the consent authority, have been made for the decommissioning of the poultry farm operating on Lot 199 DP 17437."

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal

Is the planning proposal a result of any strategic study or report?

The proposal has been prepared in response to the *Medowie Planning Strategy* which identifies parts of the site for potential development and part for environmental conservation.

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

The objective of the proposal can only be achieved by amending the *Port Stephens Local Environmental Plan 2013* (LEP 2013). The site is currently zoned RU2 Rural Landscape (with an accompanying minimum lot size of 20 hectares) and requires rezoning to permit subdivision for residential purposes and to place part of the land in an environmental conservation zone.

It is proposed to continue to proceed with the proposal rather than wait for a general review of LEP 2013 to rezone the land. This will enable the proposal to be considered in a timely manner and facilitate the delivery of land for housing in accordance with strategic planning for the area.

SECTION B – Relationship to Strategic Planning Framework

4. 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)?

Hunter Regional Plan

The proposal is consistent with the *Hunter Regional Plan* subject to development demonstrating a neutral or beneficial effect on water quality. The *Hunter Regional Plan* priority for housing in the Port Stephens LGA is to deliver existing urban release areas at Fern Bay, Medowie and Kings Hill. The site was previously identified within a 'proposed urban area – boundaries to be defined through local planning' under the superseded *Lower Hunter Regional Strategy*.

5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

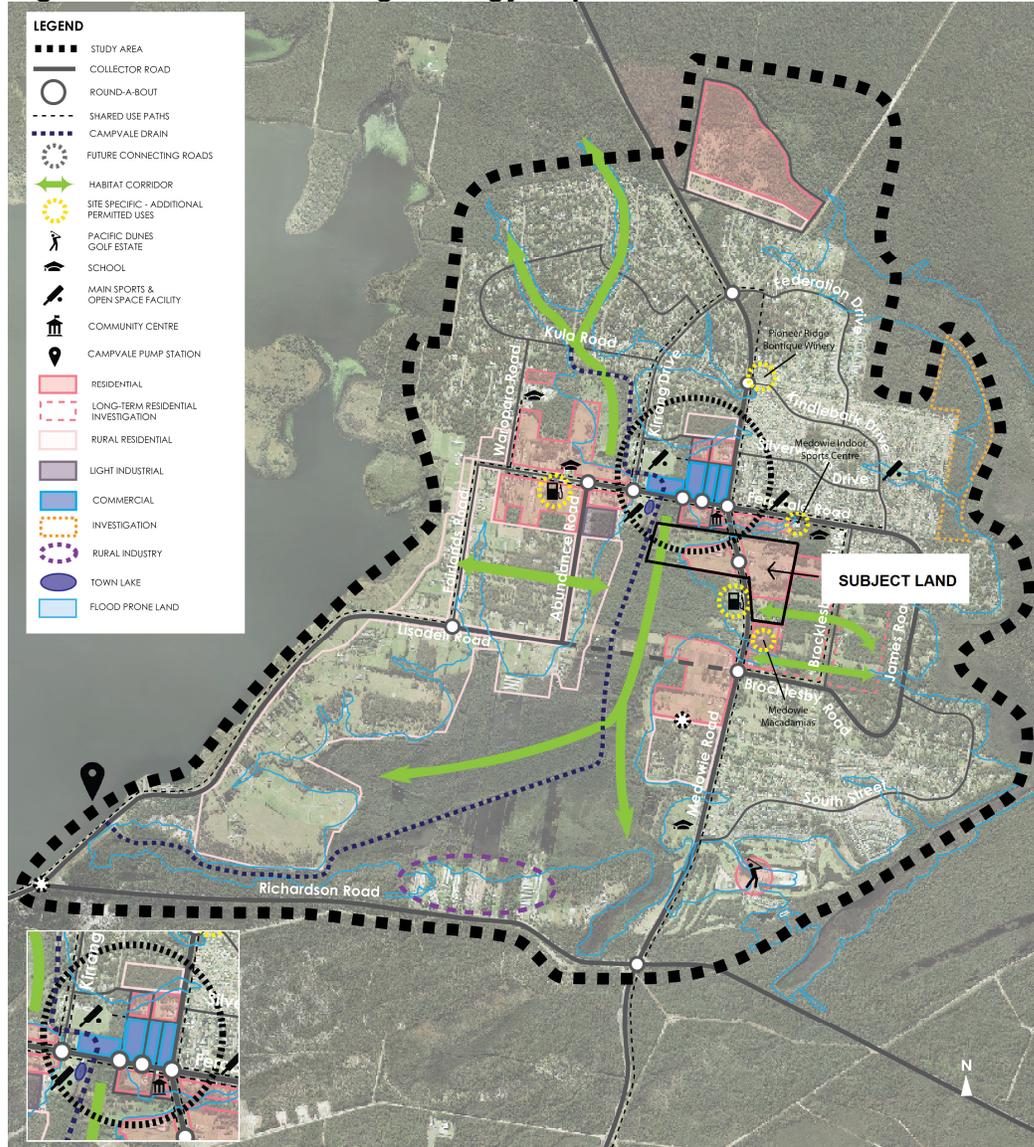
Port Stephens Planning Strategy

The proposal is consistent with the *Port Stephens Planning Strategy* which identifies the site for potential future residential development.

Medowie Planning Strategy

The proposal is consistent with the land uses identified for the site in the *Medowie Planning Strategy*. The location of the subject land relative to the *Medowie Planning Strategy* is shown in Figure 1 *Medowie Planning Strategy Map*.

Figure 1 Medowie Planning Strategy Map



6. Is the planning proposal consistent with applicable state environmental planning policies?

Assessment of the proposal against the relevant state environmental planning policies is provided in the following table.

Table A: Relevant 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 principal area of potential impact on Koala habitat under the proposal is on the eastern side of Medowie Road on part of Lot 9 DP 855814 (688 Medowie Road). The vegetation in this area is classified as Supplementary Koala Habitat, confirmed through site inspections and investigations carried out by the Proponent and concurred with by Council's Natural Resources Team (refer to *Koala Habitat Assessment Update*, Kleinfelder, 4 September 2014). The majority of remaining land being sought for rezoning and potential development across the site is primarily cleared land and identified as 100m Buffer Over Cleared Land or Link Over Cleared Land.

The proponent provides the following assessment against the CKPOM performance criteria for planning proposals:

- a) *Not result in development within areas of Preferred Koala Habitat or defined Habitat Buffer.*

"The site visit and revised Koala Habitat Map did not find any PKH or associated buffers within or directly adjoining the subject site."

Comment: Concur.

- b) *Allow for only low impact development within areas of Supplementary Koala Habitat and Habitat Linking Areas.*

"The proposed subdivision would require the removal of approximately 3 ha of SKH (1.7 ha in the south-east corner and 1.3 ha in the north-east corner). The south-east area was noted to be in low condition as the understorey is highly degraded and both the structure and composition has been modified due to grazing activities. The small area in the north-east is less degraded with some native understorey regrowth and would be considered moderate condition."

Comment: The design of the planning proposal has been modified to exclude a portion of the SKH identified in Lot 9 DP 855814 previously located within the development footprint in the R2 Low density residential lots. 1.55 hectares of SKH is now included with the proposed E2 Environmental Conservation zone which will maintain a portion of the SKH containing koala feed trees and the east-west wildlife corridor.

The planning proposal will still require the removal of 2.42 ha of Smooth Barked Apple – Blackbutt Forest (SKH) which does not meet CKPOM rezoning performance criteria (b) as it does not lead to low impact development within a portion of the identified areas of SKH. However, with the modification of the design, the overall planning proposal is considered to be consistent with the objectives of the CKPOM with the proposed offset of 8.60 ha of preferred koala habitat and 1.55 ha of SKH including a strategy to maintain and enhance Koala corridor and feed habitat values on the site and surrounds (Kleinfelder 20 February 2017).

- c) *Minimise the removal of any individuals of preferred koala food trees, where ever they occur on the site.*

"It was observed that preferred Koala feed tree species constitute less than 5 – 10% of the total canopy in the areas mapped on-site as SKH. Within the Meadowie Structure Plan, it is recommended that allowance should be made for the removal of marginal habitat on the subject site (referring to the patch of forest in the south-east). While this patch does contain a small percentage of Koala feed tree species it is isolated and the habitat is considered to be lower priority for retention compared with large patches of Preferred Koala Habitat to the west of the site."

Comment: A portion of the SKH (1.55 hectares) identified in Lot 9 DP 855814 no longer forms part of the development footprint within the R2 Low density residential lots and will be rezoned as E2 Environmental Conservation maintaining a portion of the SKH containing koala feed trees and the east-west wildlife corridor.

A final VMP has been prepared by Kleinfelder (dated 10 May 2017) to support the planning proposal for the Kingston subdivision, outlining the specific management actions that will be undertaken within the E2 zoned lands. The VMP provides the actions required in order to achieve the required ecosystem credits and area of Koala habitat required to offset impacts to the species within the R2 zoned land, planting of preferred Koala feed trees will be required within areas of the regenerating Swamp Forest which lack canopy.

- d) *Not result in development which would sever koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.*

"The known Koala movement corridor along the site's southern boundary will not be affected by the proposed subdivision as the southernmost section of the site will be retained for Environmental Management (Habitat Corridor) as per the ADW Johnson site layout.

The three proposed lots and open space area in the north-east corner would require removal of Supplementary Koala Habitat which may be acting as a Habitat Linking Area. However, this potential link to the Supplementary Habitat along the northwestern boundary (offsite) is not considered to represent an important corridor as the vegetation does not lead anywhere (with primarily cleared land occurring on the western side of Meadowie Road and urban development occurring to the north."

Comment: The design of the planning proposal has been modified to exclude a portion of the SKH identified in Lot 9 DP 855814 previously located within the development footprint in the R2 Low density residential lots. 1.55 hectares of SKH is now included with the proposed E2 Environmental Conservation zone which will maintain a portion of the SKH containing koala feed trees and the east-west wildlife corridor.

The proposal provides a net gain of habitat and corridor values of 7.73 ha. The species proposed for rehabilitation have additional values as preferred feed trees, and there is scope for other protection measures to be designed to protect and enhanced Koala values (e.g. fencing values) (Kleinfelder 20 February 2017).

OEH has reviewed the updated draft zone map, draft s88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). Based on their review OEH has no objection to the proposal proceeding.

The proposal satisfactorily addresses the provisions of this SEPP if the proposed biodiversity offset measures are implemented.

SEPP 55 Remediation of Land

A *Geotechnical and Phase 1 Contaminated Site Assessment* (RCA Australia, August 2005) has been and its findings are summarised as follows:

- The part of the site west of Medowie Road has a history of activities with a potential for causing concentrated contamination such as fruit orchard cultivation and indoor poultry farming. There are no documented activities of storage of significant quantities of hazardous chemicals or landfill or manufacturing or other industrial developments associated with the site;
- Further investigations are required prior to residential development of the area around the existing poultry sheds, abandoned orchards and a fill mound;
- As part of the DA documentation and prior to any subdivision works further environmental testing is required to address potential impacts to the site from past site use and preparation of a Remedial Action Plan will be undertaken if required.
- The part of the site to the east of Medowie Road has no history of activities with a potential for causing concentrated contamination such as cattle dip sites, cultivation, storage of significant quantities of hazardous chemicals or landfill. There are no documented activities of manufacturing or other industrial developments associated with the site.

The final general comment of the proponent's assessment is that the level of investigation undertaken for the assessment is considered appropriate for subdivision design and to support the rezoning and development application.

The proposal is consistent with this direction if the recommendations of the proponent's *Phase 1 Contaminated Site Assessment* (RCA Australia, August 2005) are followed.

SEPP (Rural Lands) 2008

This SEPP applies because the proposal seeks to rezone rural land for residential use.

The Department of Primary Industries has been consulted and advise the prime agricultural land identified is not strategic for continued agricultural production potential.

The site includes an operating poultry farm on Lot 199 DP 17437 (733 Medowie Road). There is potential for land use conflict from the poultry farm if the proposal proceeds and residential development occurs nearby.

The proposal seeks to manage the risk of odour impacts to future residents by introducing a Clause 7.20 *Development at Medowie Road, Medowie* to LEP 2013 requiring satisfactory arrangements to be made to decommission the poultry farm prior to development consent being granted on the land subject of the proposal.

Any inconsistency of the proposal with this SEPP is justified by the identification of the subject land for urban development in planning strategies and the proposed Clause 7.20 *Development at Medowie Road, Medowie* requiring satisfactory arrangements to decommission the poultry farm prior to development consent being granted for the land subject of the proposal.

1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of restricting the potential development of mineral resources etc. by permitting a land use that is likely to be incompatible with such development.

The site is surrounded by existing development, and any potential inconsistency with this direction is minor and justified primarily because the land is identified for urban development in planning strategies for the area.

Any inconsistency of the proposal with this direction is justified by the identification of the subject land for urban development in planning strategies for the area.

1.5 Rural Lands

The objectives of this direction are to:

- a) Protect the agricultural production value of rural land; and
- b) Facilitate the economic development of rural lands for rural related purposes.

This direction applies because the proposal seeks to rezone rural land for residential use.

The proposal is inconsistent with this direction because it will remove the agricultural production value of the subject land.

The Department of Primary Industries has been consulted and advise the prime agricultural land identified is not strategic for continued agricultural production potential.

Any inconsistency of the proposal with this direction is justified because the site is identified for urban development in planning strategies for the area.

Any inconsistency of the proposal with this direction is justified by the identification of the subject land for urban development in planning strategies for the area and advice from the Department of Primary Industries.

2.1 Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies when a relevant planning authority prepares a planning proposal.

The proposal proposes to remove 2.42 ha of Smooth Barked Apple – Blackbutt Forest, which has been mapped under Port Stephens Koala mapping as supplementary Koala habitat. This habitat has been acknowledged as important for corridor or connectivity purposes.

To offset these impacts the proposal will: put a conservation covenant over approximately 1.55ha of Smooth-Barked Apple – Blackbutt Forest and 1.90 ha of intact Swamp Mahogany Paperbark Forest (preferred Koala habitat), and will rehabilitate approximately 6.70 ha of low condition Swamp Mahogany Paperbark Forest (preferred Koala habitat)

In total it is proposed to implement an ecosystem and species improvement strategy over 10.15 ha to offset an impact on approximately 2.42 ha of land.

OEH has reviewed the updated draft zoning map, draft s88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). Based on their review OEH has no objection to the proposal proceeding.

The proposal is consistent with this direction.

2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies when a relevant planning authority prepares a planning proposal.

There are no items of European heritage located on the land.

The proponent commissioned a *Medowie Local Area Plan Desktop Aboriginal Heritage Assessment* (ERM Australia, June 2005). It concluded that:

- No Aboriginal sites have previously been identified within the study area. Given the extensive nature of previous surveys...and the general absence of registered Aboriginal sites from the AHIS register, it is extremely unlikely that any Aboriginal sites are present within the study area; &
- The study area has a low potential for Aboriginal sites. It is highly unlikely that Aboriginal heritage issues will constrain future plans for rezoning for development within Medowie.

The NSW Office of Environment and Heritage relevantly advised in its advice 27th June 2011 that Aboriginal heritage will need to be investigated in future planning stages.

This matter can be adequately addressed further at the development control plan and/or development application stages.

Any inconsistency with this direction is justified because the proposal is consistent with planning strategies for the area, and potential heritage issues can be adequately addressed at the development control plan and development application stages. The planning proposal was referred to the Worimi Local Aboriginal Land Council with no comment received.

Any inconsistency of the proposal with this direction is justified for the reasons outlined above including addressing issues at the development application stage.

3.1 Residential Zones

The objectives of this direction are:

- a) To encourage a variety and choice of housing types to provide for existing and future housing needs;
- b) To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services;
- c) Minimise the impact of residential development on the environment and resource lands.

The proposal is consistent with this direction because it will provide housing in accordance with planning strategies for the area. It is seeking to rezone approximately 27 hectares of land for residential development in accordance with strategic planning for the area. The *Medowie Planning Strategy* estimates a yield of 300 dwellings for the site.

The proposal is consistent with this Direction.

3.3 Home Occupations

The objective of this direction is to encourage the carrying out of low impact small businesses in dwelling houses.

The proposal maintains the ability to undertake a home occupation in the R2 Low Density Residential Zone under the existing provisions of LEP 2013.

The proposal is consistent with this direction.

3.4 Integrating Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following objectives:

- a) Improving access to housing, jobs and services by walking, cycling and public transport.
- b) Increasing the choice of available transport and reduce dependence on cars.
- c) Reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car;
- d) Supporting the efficient and viable operation of public transport services;
- e) Providing for the efficient movement of freight.

This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land.

The proposed land uses are consistent with adopted planning strategies for the area.

The site is located close to the urban centre of Medowie and provides the opportunity to improve access to housing, jobs and services by walking, cycling and public transport, and reduce dependence on cars.

The proposal supports the future efficient and viable operation of an improved public transport system by increasing population density close to the town centre.

The proposal is consistent with this direction.

3.5 Development Near Licensed Aerodromes

The objectives of this direction are:

- a) To ensure the efficient and safe operation of aerodromes;
- b) To ensure their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity.
- c) This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.

Medowie is located near the Williamstown RAAF Base/Newcastle Airport and the Salt Ash Air Weapons Range.

The subject land is not affected by the ANEF 2012 or 2025 maps; however land outside of ANEF contours can still be affected by aircraft noise and activity.

Given the land is outside of ANEF contours, and is identified in adopted planning strategies for urban development, and aircraft noise and activity is not likely to affect the intent of the proposal.

The Department of Defence have been consulted and advise that the site is located outside of ANEF contours and do not object to the proposal.

The proposal is consistent with this direction.

4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.

This direction applies because the subject land is identified as Class 3 and 5 acid sulfate soils. Preliminary geotechnical investigations of the site undertaken by the proponent have shown that the likelihood of acid sulphate soils is low in the areas proposed for rezoning for urban development.

LEP 2013 also contains provisions requiring appropriate measures to be taken at the development application stage to avoid adverse impacts from the presence of acid sulphate soils.

The proposal is consistent with this direction.

4.3 Flood Prone Land

The objectives of this direction are:

- a) To ensure that development of flood prone land is consistent with the NSW *Flood Prone Land Policy* and the principles of the *Floodplain Development Manual 2005*.
- b) To ensure that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.

Parts of the site are identified as flood prone land. On the eastern side of Medowie Road the extent of affectation is very minor. On the western side of Medowie Road the R2 Low Density Residential Zone boundary is placed to primarily avoid flood prone land.

The proponent for land on the western side of Medowie Road has provided additional information to amend and extend the residential zone footprint. The report indicates there is no significant impact on adjacent properties as a result of the filling and compensatory storages (refer to *Flood Impact Assessment of Proposed Works Lot 199/17437 Medowie Road, Medowie*, WMA Water, 2 June 2017). The additional information has been reviewed by Council's Drainage and Flooding Section who concur with the recommendations of the WMA report. This issue can be further addressed at the development control plan and development application stage through subdivision design and assessment.



Any inconsistency of the planning proposal with this direction is of minor significance.

4.4 Planning for Bushfire Protection

The objectives of this direction are:

- a) To protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas.
- b) To encourage sound management of bush fire prone areas.

This direction applies because part of the land is mapped as bushfire prone.

A *Draft Bushfire Hazard Assessment* was carried out for the Proponent in August 2005 (Barry Eadie Consulting Pty Ltd, August 2005). The Assessment was undertaken in accordance with *Planning for Bushfire Protection* and AS 3959-1999: *Construction of Buildings in Bush Fire Prone Areas* (superseded). The assessment states that provided the recommendations of the report are implemented the proposed development achieves the intent of the relevant legislation and in particular the requirements set out in *Planning for Bushfire Protection 2001*. The Rural Fire Service (RFS) provided comment on the proposal in 2009 and raised no concerns or special consideration in relation to bushfire matters.

Planning for Bushfire Protection 2006 is now in place. Given the previous assessment and advice it is likely that any future subdivision and development on the subject land will be able to incorporate bushfire protection measures. A bushfire report will be provided with a future development application for residential subdivision and referred to the RFS. Asset Protection Zones will be required. The need to comply with *Planning for Bushfire Protection 2006* will also be referred to in a development control plan for the site.

The consistency of the proposal with this direction can be confirmed by updated referral to the RFS (if required).

5.1 Implementation of Regional Strategies

The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

The proposal is consistent with the *Hunter Regional Plan*, subject to development demonstrating a neutral or beneficial effect on water quality. The *Hunter Regional Plan* priority for housing in the Port Stephens LGA is to deliver existing urban release areas at Fern Bay, Medowie and Kings Hill. The site was previously identified within a 'proposed urban area – boundaries to be defined through local planning' under the previous *Lower Hunter Regional Strategy*.

The proposal is consistent with this direction.

6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- a) To facilitate the provision of public services and facilities by reserving land for public purposes;
- b) Facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

This direction applies when a relevant planning authority prepares a planning proposal.

The proposal does not seek to dedicate any land to a State public authority.

No public parks are proposed.

Any stormwater detention basins may be dedicated to Council at a future stage.

The proposal is consistent with this direction.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site-specific planning provisions.

This direction applies because the planning proposal seeks to apply a site-specific provision to manage the potential to expose future residents to unacceptable risk of odour impacts from a poultry farm on Lot 199 DP 17437.

The site-specific clause is appropriate in this instance because it facilitates the rezoning of the land proceeding, whilst ensuring satisfactory arrangements are made for decommissioning the poultry farm prior to residential development taking place and negating potential exposure of future residents to unacceptable odour impacts.

Any inconsistency of the proposal with this direction is of minor significance.

SECTION C – Environmental, Social and Economic Impact

8. 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?

The koala is listed under the *Threatened Species Conservation Act 1995* (NSW) (TSC Act) as a 'vulnerable' species and in the *Environmental Protection and Biodiversity Conservation Act 1999* (Commonwealth) as a 'vulnerable' species.

The impact of the proposal relative to koala habitat is addressed previously in this proposal in Table 1 *Relevant State Environmental Planning Policies* under SEPP 44 Koala Habitat Protection.

Consultants HWR Ecological completed an ecological assessment in for the Proponent to accompany the proposal in 2005 (*Ecological Assessment – Medowie Road Medowie*, HWR Ecological, 2005). The relevant assessment results are:

- No threatened flora species or populations on the subject site;
- One threatened fauna species (the koala) was recorded; and
- Endangered Ecological Community Swamp Sclerophyll Forest on Coastal Floodplains.

The OEH advised that, in the absence of a formal Biodiversity Certification or Biobanking Agreement under Parts 7A and 7AA of the TSC Act threatened species assessments under the *Environmental Planning and Assessment Act 1979* (NSW) will be required at the development application stage. If the proposed development application is for land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, a Species Impact Statement will be required and OEH will have a concurrence role in the development application.

It is proposed to resolve any potential threatened species issues at the development application stage.

OEH has also reviewed the updated draft zoning map, draft 88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). Based on this review OEH has no objection to the proposal proceeding.

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

Odour

A poultry farm is currently in operation on Lot 199 DP 17437 which is included within the land subject of the proposal. Potential odour emissions from the farm have the potential to prevent the development of the subject land due to risk of unacceptable

odour impacts to future residents. To manage this risk it is proposed to introduce a clause to Part 7 *Additional local provisions* as follows:

Clause 7.20 Development at Medowie Road, Medowie

- (1) This clause applies to land at Medowie Road, Medowie, being Lots 200 DP 19739, Lot 199 DP 17437, Lots 1-2 DP 567481 & Lots 7-9 DP 855814.*
- (2) Despite any other provision of this Plan, development consent must not be granted to the development on land to which this clause applies unless the consent authority is satisfied that arrangements, acceptable to the consent authority, have been made for the decommissioning of the poultry farm operating on Lot 199 DP 17437.*

The effect of the above proposed clause is to ensure that satisfactory arrangements are made to ensure the poultry farm ceases to operate prior to the development of the land for residential use.

Vegetation

The preparation of a site-specific development control plan for the site is required under the provisions of the Clause 6.3 *Development Control Plan* of LEP 2013 and may assist in ameliorating any impacts on vegetation. It relevantly provides that the development control plan will require a landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation. OEH has also reviewed the updated draft zoning map, draft 88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). Based on this review OEH has no objection to the proposal proceeding.

Flooding and Drainage

The zone footprint is mostly located to avoid areas of flood prone land. Any incursion is minor and to be managed at the development control plan and development application stage.

On the eastern side of Medowie Road the extent of affectation is very minor.

On the western side of Medowie Road the R2 Low Density Residential Zone boundary is placed to primarily avoid flood prone land. The proponent for land on the western side of Medowie Road has provided additional information to amend and extend the residential zone footprint. The report indicates there is no significant impact on adjacent properties as a result of the filling and compensatory storages (refer to *Flood Impact Assessment of Proposed Works Lot 199/17437 Medowie Road, Medowie*, WMA Water, 2nd June 2017). The additional information has been reviewed by PSC Drainage and Flooding Section who concur with the recommendation of the WMA report. This issue can be further addressed at the development control plan and development application stage through subdivision design.

Stormwater management and water quality is a principal concern given the location of the site within the drinking water catchment for Grahamstown Dam. Hunter Water Corporation has raised this issue however do not object to the proposal. Water quality is also referred to in the *Hunter Regional Plan*. Further detailed design of stormwater management measures will occur during the preparation of a development control plan for the site in accordance with the provisions of Clause 6.3 *Development Control Plans* of LEP 2013. A concept plan provided by the proponent identifies potential locations for and indicative sizes of detention basins to manage stormwater.

Traffic

A concept plan provided by the proponent identifies that a 'traffic management facility – possible roundabout' will be required at the intersection with Medowie Road.

The Proponent acknowledges the need to provide intersection facilities on Medowie Road as part of any future development and a detailed traffic assessment of the final development would need to be undertaken including consultation in relation to the preferred intersection treatments.

Council commissioned the *Medowie Traffic and Transport Study* including an accompanying local contributions plan to complement the superseded *Medowie Strategy* adopted in 2009 (refer to *Medowie Traffic and Transport Study*, URAP-TTW Consulting Services, December 2012). The *Medowie Traffic and Transport Study* including local infrastructure contributions plan is under review to respond to the *Medowie Planning Strategy* adopted in 2016.

Summary

In managing any other likely environmental effects as a result of the proposal the requirement to prepare a site-specific development control plan under the provisions of Clause 6.3 *Development Control Plan* of LEP 2013 is considered the appropriate mechanism to further address potential impacts. The site-specific development control plan must provide for all of the following:

- A staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing;
- An overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrian and cyclists;
- An overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain;
- A network of active and passive recreation areas;
- Stormwater and water quality management controls;
- Amelioration of natural and environmental hazards, including bushfire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected;
- Detailed urban design controls for significant development sites;

- Measures to encourage higher density living around transport, open space and service nodes;
- Measures to accommodate and control appropriate neighbourhood commercial and retail uses;
- Suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.

Proceeding with the proposal and applying the proposed zoning is appropriate for the site at this time and any further detailed investigations can occur following the rezoning of the land.

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

The proposal will have a positive social and economic effect through the provision of approximately 27 hectares of land for housing. The *Medowie Planning Strategy* estimates a yield of 300 dwellings for the site.

SECTION D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The proponent provides the following summary of the ability to provide utilities to the site:

"In consideration of the rezoning of the subject lands for urban purposes it is important to consider the implications for the supply of services necessary to support the impending development. SKM were engaged to provide advice in this regard and a copy of their report was provided in the original rezoning submission.

The report investigated the availability of Gas, Power and Street Lighting, Water, Sewer & Telecommunications. The following extract is the conclusion from the report:

"From our preliminary investigations it would appear that the proposed development can proceed on the basis that all the service categories examined in this report are able to be provided.

Further investigation will need to be undertaken for all services as part of the preparation of the development application and to develop a full understanding of the real costs for development. This further investigation could proceed following the approval of the re-zoning application.

These investigations would include:

- *A formal request for Agility to undertake a business case assessment of the proposed development with a stated outcome as being the determination of Developer Contributions to the provision of natural gas.*

- *The undertaking of a developer funded site specific servicing strategy for the provision of water to the site.*
- *The undertaking of a developer funded site specific servicing strategy for the provision of sewer transport from the site.*
- *Negotiation with Telstra regarding the level of service appropriate for the site.*
- *Further investigation into the power supply requirements for the site and the cost requirements for the site".*

(ADW Johnson, 2011, pg. 31)

Hunter Water Corporation has been consulted regarding the ability to provide sewer and water and their advice is provided in the following section.

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

Hunter Water Corporation (HWC) provided advice on 10 July 2014:

- Water Supply – the land to be rezoned is located in the Williamstown-Medowie Water Supply System and there is currently sufficient capacity for the estimated demand from the proposed rezoning area.
- Wastewater transportation – a wastewater servicing strategy would be required for the development and at a minimum be required to address the following;
 - Overall load of the area
 - Surrounding potential developments
 - Proposed connection points to the HWC system
 - Details of new infrastructure and upgrades to HEC infrastructure
 - Staging of development
 - Investigation of alternative options
 - Identification of least community cost option
 - Wastewater treatment – there is currently sufficient capacity at the Raymond terrace WWTW, although there are limitations at the plant's inlet works. Large developments may need to be assessed individually to determine whether they have an impact on the peak instantaneous flow to the plant. Plant capacity and regional development is assessed over time to ensure upgrades are staged in a manner that ensures future development areas can be adequately serviced.
- Water Resources – Development in the Medowie area is of considerable importance to HWC because urban runoff from this catchment enters the Grahamstown Dam drinking water source via the Campvale Drain. Grahamstown Dam supplies approximately 40% of the region's drinking water and protecting its physical and chemical condition is essential.
- HWC is currently working with Council to implement best practice stormwater management in the Medowie area and in the drinking water catchments more broadly. Effective development controls are a key mechanism by which water quality within the drinking water catchments is protected and maintained. It is therefore important that the proposed development is consistent with the

strategic objectives for protecting water quality within the drinking water catchments.

- HWC considers that the proposed development is of a scale that could have a significant adverse impact on water quality during construction and operational phases if water quality protection measures are not implemented.
- HWC therefore requires that the proposed development has a demonstrated neutral or beneficial effect on stormwater quality that flows from the site. It is therefore requested that Council ensure that the development includes the design, construction and maintenance of water quality improvement devices that have a demonstrated capacity to remove all additional contaminants from the stormwater runoff of the site.
- HWC has no objections to the rezoning proposal but the developer will have to continue to liaise with HWC to ensure that the site is effectively serviced and best practice stormwater management is implemented.

Planning Proposal Response

- The proponent will need to prepare a servicing strategy at a future stage and consult with HWC during its preparation.
- The proponent has provided indicative locations for detention basins. The proponent will need to address stormwater and drainage in detail during the preparation of a site-specific development control plan for the site in accordance with the provisions of Clause 6.3 *Development Control Plan* of LEP 2013 and also at the development application stage.
- No objection to the proposal is noted. The proponent will need to continue to liaise closely with HWC and Council to ensure that water quality objectives are met during the design and development stages following the rezoning of the land.

NSW Department of Primary Industries - Office of Water

- Riparian Corridors - The site is adjacent to a watercourse that may be considered waterfront land under the *Water Management Act 2000* (NSW). Any development within 40m of water front land may require a controlled activity approval from the Office of Water.
- Flooding and Water Cycle Management - Part of the site is considered to be flood prone and that there is a proposal to install detention basins to mitigate these impacts. It is recommended the management of peak flows using detention basins be designed so that these structures are off line, and are consistent with the guidelines for controlled activities. It is also recommended that objectives incorporate the maintenance of groundwater recharge at pre-development levels.
- Prior to construction of any detention basin, the proponent would need to determine if any licenses or approvals were required under the *Water Act 1912* (NSW) or the *Water Management Act 2000* (NSW) for these works.
- The proponent should liaise with the Office of Water regarding the existing licensed dam on the site and any implications future development may have on this. It is also recommended the proponent consult the NSW Dams Safety Committee for any future development in proximity to the existing dam or proposed changes to the dam.

Planning Proposal Response

- The matters raised can be addressed at the development control plan and/or development application stage.
- Detention basins will be located off-line/within the development zone footprint in accordance with Council requirements.

NSW Department of Primary Industries – Agriculture

- DPI recommends that residential development should not occur proceed while the poultry farm is in operation within a distance as per a Level 1 odour impact assessment for broiler chicken farms.
- DPI agrees that the prime agricultural land identified is not strategic for continued agricultural production potential, however the locality still retains some agricultural production on small lots and therefore council will need to consider the implications of residential development on these operations.
- The placement of a habitat zone to the south of Lot 9 DP 855814 (688 Medowie Road) will assist to buffer the horticultural operations on the adjoining southern allotment. However, other issues of providing a fence to limit public access may be necessary.
- To address the potential risk of creating land use conflict within the locality a risk analysis could be undertaken.

Planning Proposal Response

- The land containing the poultry farm is included within the proposal and is proposed for rezoning from RU2 Rural Landscape to R2 Low Density Residential.
- The proposal includes the introduction of an 'additional local provisions' clause to LEP 2013 requiring satisfactory arrangements for the decommissioning of the poultry farm prior to consent being granted for the development of the land.
- Rezoning the land will provide options for decommissioning of the poultry farm and its residential development will negate any land use conflict.
- Rezoning the land is consistent with State and local strategic planning for the area.
- The placement of the E2 Environmental Conservation zone between the proposed development area and the macadamia farm will act as a buffer approximately 120m wide to reduce the risk of land use conflict.

NSW Office of Environment and Heritage

The NSW Office of Environment and Heritage (OEH) has provided comment on three occasions over time (17 June 2011; 18 June 2014; 20 June 2017).

OEH first provided comment on 17 June 2011 as summarised below:

- OEH recognises that the proposal, including a plan of the proposed site layout (ADW Johnson Pty Ltd, version F, amended 27 April 2011), appears to be consistent with the Medowie Strategy adopted by Council in 2009. Consequently, OEH supports the draft LEP amendment, and provides some additional advice to Council prior to the rezoning of the site;
- OEH notes and encourages the designation of the southern portion of Lot 9 DP 855814 as Environmental Management (Habitat Corridor) to allow the continued use of this land by Koalas moving east-west across the site and Medowie Road. It is important that this corridor is conserved and managed for conservation into the future and OEH encourages a zoning to reflect this (i.e. E2 Environmental Conservation). In addition, OEH recommends that the Proponent and Council develop a site layout that maximises the retention of individual preferred Koala food trees within subdivided lots and allows continued Koala movement across the entire site, including the development areas;
- It is noted that an additional road connecting road to Medowie Road has been proposed to the north of the habitat corridor. This may provide opportunities for traffic calming and speed reduction to be implemented in this area of Medowie Road. A reduction in the travelling speed of vehicles through this area is likely to have beneficial effects on the road crossing success of Koalas within the corridor area where there have been large numbers of Koala injuries and deaths recorded. OEH encourages Council to continue to investigate the issue of Koalas crossing Medowie Road and supports the implementation of conservation recommendations identified in the *Medowie Strategy*;
- Any impacts on areas of native vegetation across the site will require offsetting to achieve an 'improve or maintain' outcome for biodiversity values. In order to determine whether the proposal achieves this, biodiversity offsets should be assessed using either OEH's offsetting principles or using the Biobanking Assessment Methodology under the NSW Government's Biodiversity Banking and Offsets Scheme. It should be noted that the Environmental Management (Habitat Corridor) area may be suitable for use as a biodiversity offset if the area is to be managed for conservation under effective and secure long term management arrangements;
- If the proposed LEP affects any species or a threatened ecological community consultation may be required under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).
- OEH acknowledges the rezoning application will not involve ground disturbance works, and thus will not impact on Aboriginal cultural heritage at this stage. OEH encourages further surveys and consultation to be conducted at early stages of the project in order to identify any significant Aboriginal cultural features or sites that may need to be avoided and/or protected. The *National Parks and Wildlife Act 1974* (NSW) (*NPW Act*) was amended in October 2010 to include significant changes that will need to be considered for any further planning associated with this proposed development. OEH also added that consultation with the Aboriginal community, due diligence procedures, report writing, assessments and investigations of Aboriginal cultural heritage in NSW must be conducted in accordance with Part 6 of the *NPW Act 1974*.

OEH provided further comment on 18 June 2014 as summarised below:

- It is noted that the current proposal has been further amended from the previous versions that OEH has commented on and includes areas to the east and west of Medowie Road.
- In relation to the area east of Medowie Road OEH considers its previous advice remains current.
- In relation to the area west of Medowie Road OEH acknowledges that the area proposed for rezoning is cleared of vegetation and has limited biodiversity value. And that the zoning outcomes are consistent with the *Medowie Strategy*. OEH does not object to the addition of the cleared area west of Medowie Road to the proposed rezoning area.
- Throughout the planning proposal the proponent has yet to demonstrate how an 'improve or maintain' outcome will be achieved for biodiversity values will be achieved across the site. This will need to be addressed as the proposal progresses noting that in the absence of a formal Biodiversity Certification or Bio-banking Agreement under Parts A and & AA of the *TSC Act 1995* threatened species assessments under the *EP and A Act 1979* will be required at the development application stage. If the proposed development application is for land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats, a Species Impact Statement will be required and OEH will have a concurrence role in the development application.

OEH provided further comment on 20 June 2017 as summarised below:

- OEH has reviewed the updated draft zoning map, draft s88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). Based on this review OEH has no objections to the planning proposal proceeding.

Planning Proposal Response

- Following the rezoning of the site Council and the proponent will work to prepare a site-specific development control plan that addresses development layout and potential retention of vegetation within the development footprint.
- Speed reduction measures on Medowie Road are separate to the rezoning process.
- OEH does not object to the proposal however relevantly identifies that if there is potential impact on threatened species from development (following the rezoning of the site) it will need to be addressed at the development application stage and this may require a Species Impact Statement and referral to OEH.
- Aboriginal heritage will be further addressed at the development control plan and/or subdivision development application stage. The *Desktop Aboriginal Heritage Assessment* (ERM Australia, June 2005) commissioned by the Proponent concludes it is extremely unlikely that any Aboriginal sites are present within the study area and there is a low potential for Aboriginal sites.

- The proposal will rezone part of Lot 9 DP 855814 (688 Medowie Road); part of Lot 199 DP 17437 (733 Medowie Road) and part of Lot 200 DP 19739 (717 Medowie Road) from RU2 Rural Landscape to E2 Environmental Conservation consistent with the *Medowie Planning Strategy*.
- Additional information has been provided to resolve the environmental issues raised by OEH. This includes the updated draft zoning map (included with this planning proposal), draft s88B covenant, biodiversity calculations (Kleinfelder 20 February 2017) and vegetation management plan (Kleinfelder 10 March 2017). OEH has reviewed this additional information and has no objection to the planning proposal proceeding.

NSW Roads and Maritime Services

The RMS provided comment on 12th January 2009 and advised it has no objection to the rezoning however noted Council should consider the following comments:

- Council should investigate the need for any classified road upgrades to ensure that there is adequate road capacity for all existing and future users and so that equitable and adequate funding mechanisms can be developed.
- Intersection analysis should be undertaken which includes the existing and future intersections of major local roads and classified roads with Medowie Road.
- The intersection of Medowie Road and Ferodale Road in the existing town centre would need to be assessed in greater detail. However, if there are issues with pedestrians the use of traffic control signals would be a feasible option.
- The sealing of Medowie Road and the proposed rezoning may potentially lead to increases in traffic volumes using Medowie Road, particularly for vehicles traversing between Newcastle Airport and the Pacific Highway.
- As a result of the above, intersection upgrades may also be required at the intersection of Pacific Highway/Medowie Road and Richardson Road/Medowie Road.
- Intersection analysis should be undertaken and there should be continued monitoring of motorist behaviour to identify any changing trends.
- The RTA notes that the provisions for cyclists are not specified on Medowie Road. Council should consider the need for such a facility.
- The RTA would expect that the necessary road and transport infrastructure improvements required as a direct result of any future development be funded by developers through Section 94, planning agreements or contribution levies.

Planning Proposal Response

- No objection to the proposal is noted.
- Council commissioned the *Medowie Traffic and Transport Study* including an accompanying local contributions plan to complement the superseded *Medowie Strategy* adopted in 2009 (refer to *Medowie Traffic and Transport Study*, URAP-TTW Consulting Services, December 2012). The *Medowie Traffic and Transport Study* including local infrastructure contributions plan is under review to respond to the *Medowie Planning Strategy* adopted in 2016.

- A site-specific development control plan is required for the site prior to development consent being granted for subdivision (in accordance with Clause 6.3 *Development Control Plans* of LEP 2013). The development control plan is required to address the overall movement hierarchy, showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists.

NSW Rural Fire Service

The RFS provided comment on the proposed rezoning on 12th January 2009 and advised as follows:

- Based upon an assessment of the plans and documentation received for the proposal, the RFS raises no concerns or special consideration in relation to bushfire matters for the proposed amendment to the existing LEP.
- That future residential or Special Fire protection Purpose Developments identified as bushfire prone will be subject to the requirements of Section 79BA of the *EP and A Act 1979* and Section 100B of the *Rural Fires Act 1997* (NSW).

Planning Proposal Response

- Future development will be designed to meet planning for bushfire protection requirements.
- Given the previous assessment and advice it is likely that any future subdivision and development on the subject land will be able to incorporate bushfire protection measures such as asset protection zones and appropriate building construction standards to mitigate any bushfire risk.
- *Planning for Bushfire Protection 2006* is now in place. Given the previous assessment and advice it is likely that any future subdivision and development on the subject land will be able to incorporate bushfire protection measures. A bushfire report will be provided with a future development application for residential subdivision. Asset Protection Zones will be required and will not impact proposed conservation corridors. The need to comply with *Planning for Bushfire Protection 2006* will also be referred to in a development control plan for the site.

Commonwealth Department of Defence

The Department of Defence (Defence) provided additional comment on 13 June 2014 summarised as follows:

- Defence is supportive of a strong community whilst concurrently seeking to ensure that Defence operations and activities are not disrupted or hindered by inappropriate development located in close proximity to RAAF Base Williamstown. Historically, the residents in the Medowie area have expressed concerns about aircraft noise. Defence is concerned that the proposed sites for rezoning may be exposed to high amounts of aircraft noise.

- Defence notes that the proposed sites are located outside the ANEF 20 contour for RAAF Base Williamtown and Salt Ash Air Weapons Range. On this basis, Defence does not object to the planning proposal. However the sites are likely to be exposed to aircraft noise. On this basis Defence requests that Council advises future residents that sites are likely to be exposed to some level of aircraft noise in accordance with Section 5.1 of the Port Stephens Aircraft Noise Policy 2010.
- To assist residents in ascertaining noise impacts derived from military aircraft, Defence requests that Council notifies future residents of Defence Noise Flight Path Monitoring System and other general information about RAAF Base Williamtown (available on the internet).
- To ensure continued safe operations of military aircraft, future development may require assessment by Defence. Future development of tall structures or development that requires the use of cranes may breach the Obstruction Clearance Surfaces requirement for RAAF Base Williamtown.

Planning Proposal Response

- The land is not located within ANEF contours.
- Notice is placed on 149(5) Planning Certificates advising that all areas of Port Stephens LGA can be affected by aircraft noise from time to time.
- Development that intrudes into the Limitation or Operations Surface for the RAAF Base Williamtown Airport requires referral to Defence under Clause 7.4 *Airspace Operations* of the LEP.
- Future development will need to address the requirements of Chapter B7 *Williamtown RAAF Base – Aircraft Noise and Safety* of the *Port Stephens Development Control Plan 2014*.

Part 4 - Mapping

The proposed map layer amendments are included as attachments to the planning proposal as follows:

- Amend LEP 2013 Land Zoning Map in accordance with the proposed Draft Land Use Zone Map at **Attachment 1**.
- Amend LEP 2013 Lot Size Map in accordance with the proposed Draft Lot Size Map at **Attachment 2**.
- Amend LEP 2013 Height of Buildings Map in accordance with the proposed Draft Height of Buildings Map at **Attachment 3**.
- Amend LEP 2013 Urban Release Area Map in accordance with the proposed Draft Urban Release Area Map at **Attachment 4**.

Part 5 - Details of Community Consultation

The proposal was placed on public exhibition from 22 May to 26 June 2014. Four submissions were received from members of the public. The key issues raised were potential impact on a nearby macadamia farm and infrastructure and transport planning. No changes were made to the planning proposal as a result of the submissions received.

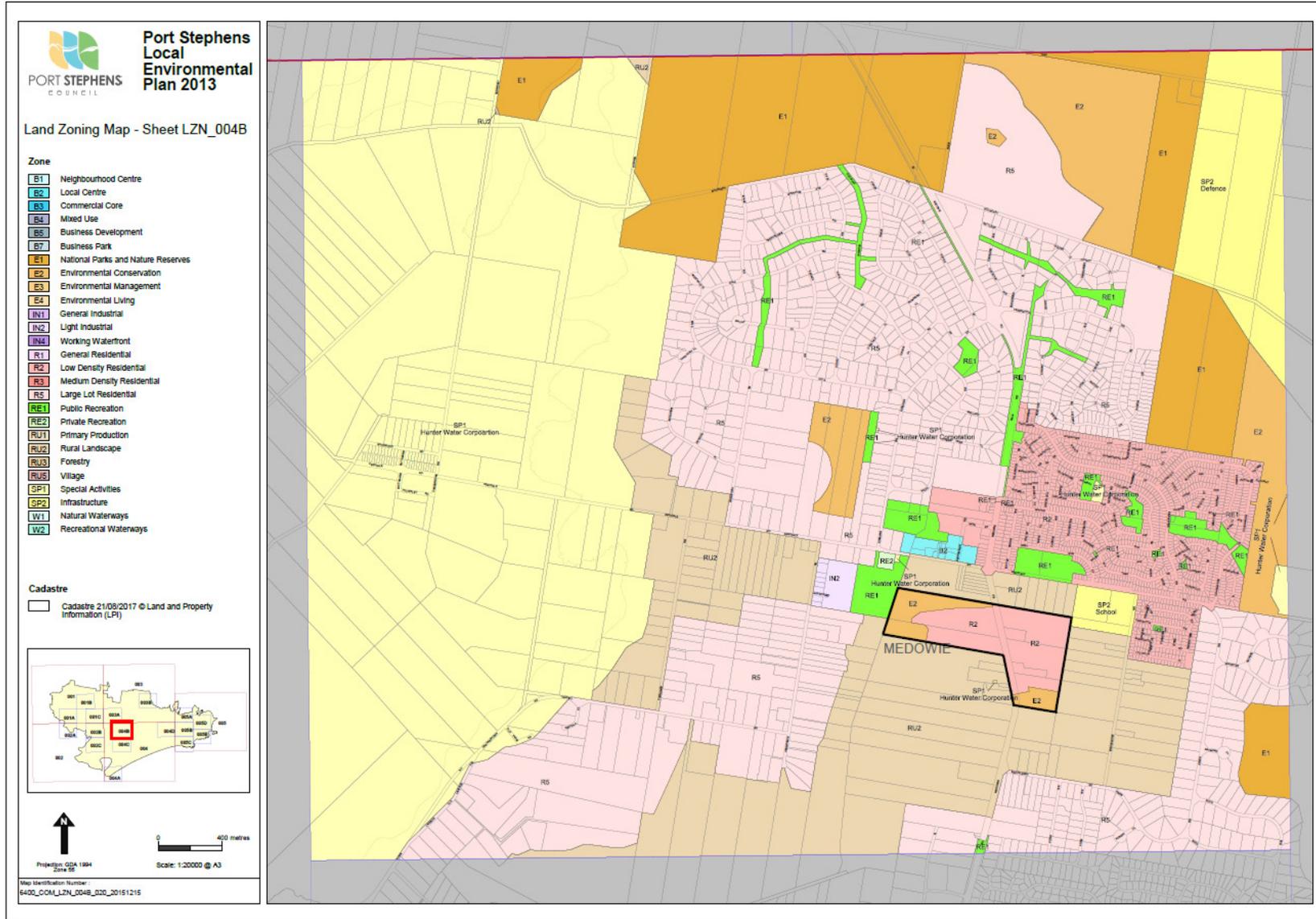
Council is consulting with those landowners whose land is subject to the post-exhibition change to place land within the E2 Environmental Protection Zone in response to the concerns raised by OEH.

Part 6 – Project timeline

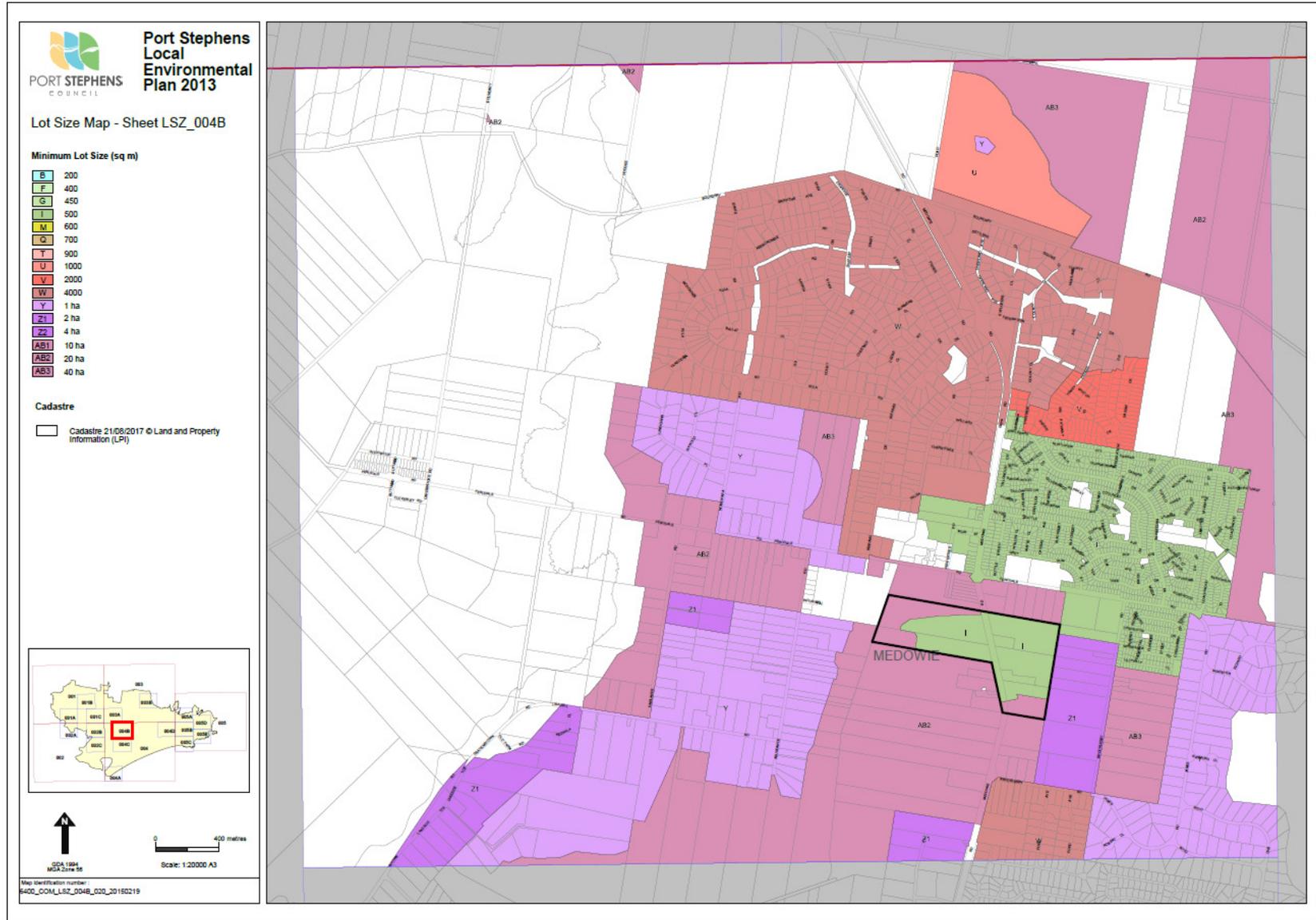
The following timetable is proposed:

	September 2017	October 2017	November 2017
<i>Revised Gateway Determination</i>			
<i>Report to Council</i>			
<i>Proposal forwarded to Department of Planning and Environment</i>			

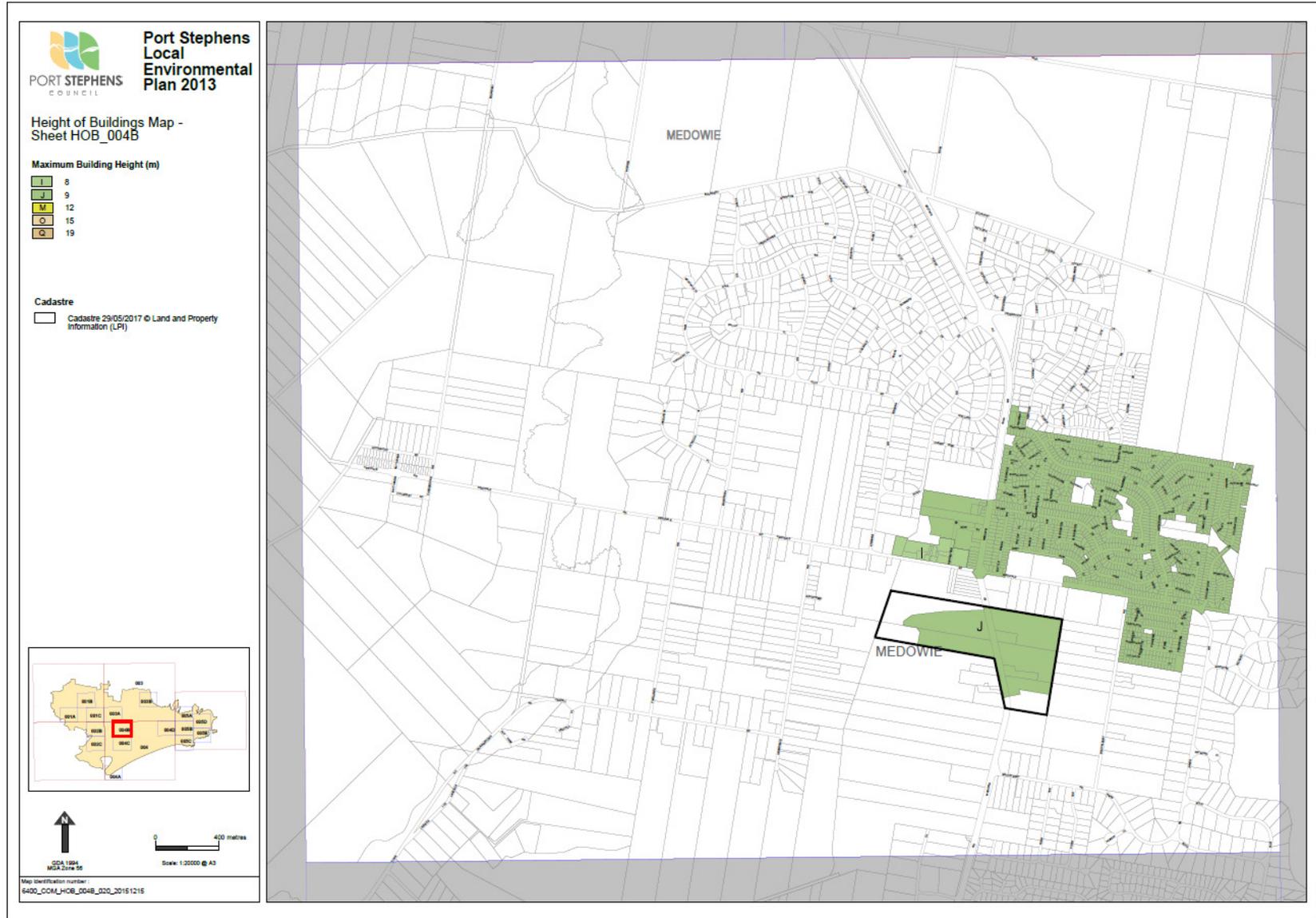
Attachment 1 Draft Land Zoning Map



Attachment 2 Draft Lot Size Map



Attachment 3 Draft Height of Buildings Map



Attachment 4 Draft Urban Release Area Map

