

Planning Services

IRF18/5499

Plan finalisation report

Local government area: Port Stephens

1. NAME OF DRAFT LEP

Port Stephens Local Environmental Plan 2013 (Amendment No 28).

2. SITE DESCRIPTION

The planning proposal applies to land at 111 South Street, Medowie (Lot 14 DP 1079392) and 1C Sylvan Avenue, Medowie (Lot 11 DP 1105086). The planning proposal is at **Attachment B**.



Figure 1: Locality map.

3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the land from R2 Low Density Residential to R5 Large Lot Residential;
- increase the minimum lot size from 450m² to 2000m²; and
- change the height of building from 9m to no height.

Proposed LEP maps are at **Attachment Maps**.

The proposal seeks to provide consistencies with surrounding zoning and prevent subdivision into smaller lots that may impact on the amenity and streetscape of the surrounding area. The two sites and proposed changes are identified in Figures 2-5 (pages 2-3).

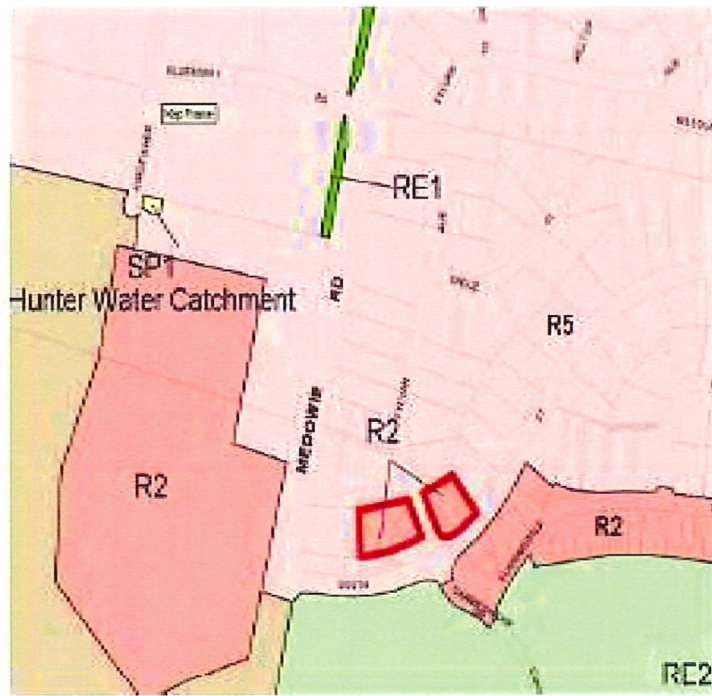


Figure 2: Current zoning (sites outlined in red).

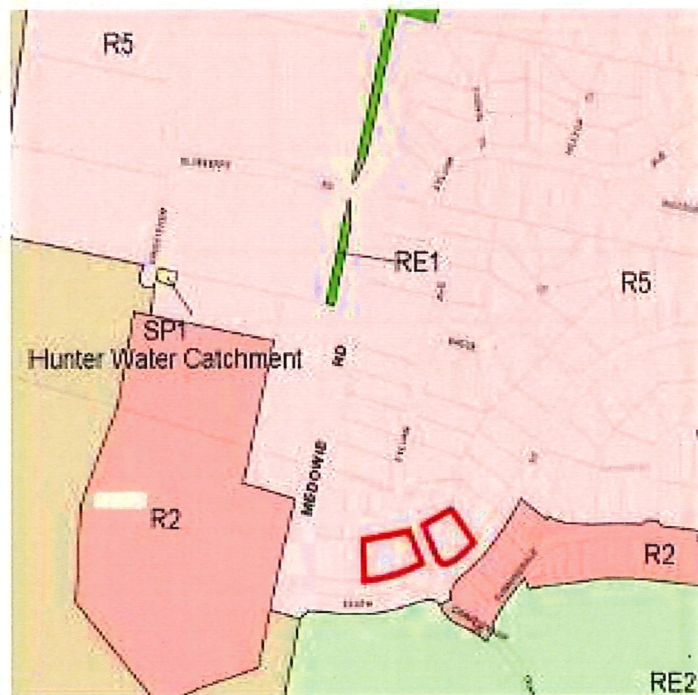


Figure 3: Proposed zoning (sites outlined in red).

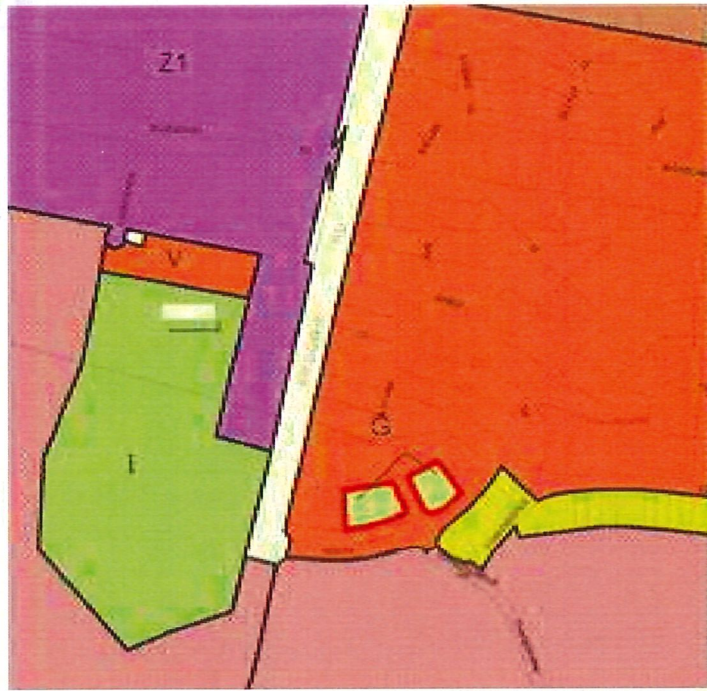


Figure 4: Current minimum lot size – 450m² (sites outlined in red).



Figure 5: Proposed minimum lot size – 2000m² (sites outlined in red).

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Port Stephens State Electorate. Ms Kate Washington MP is the State Member for Port Stephens. Ms Washington made an enquiry to the Department of Planning and Environment on behalf of a community member. Ms Washington did not express a view on the planning proposal.

Mr Scot MacDonald MLC is the Parliamentary Secretary for Planning, the Central Coast and the Hunter. Mr MacDonald met with one of the landowners. Mr MacDonald has not expressed a view on the planning proposal.

The Hon Anthony Roberts MP is the Minister for Planning, Minister for Housing, and Special Minister of State. The Minister responded to an enquiry from Ms Washington

on behalf of a community member. The Minister did not express a view on the planning proposal. The Minister's Office met with community members from the Medowie area.

The site falls within the Paterson Federal Electorate. Ms Meryl Swanson MP is the Federal Member for Paterson. To the regional planning team's knowledge she has not made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 7 August 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 5 September 2018 to extend the time to complete the LEP (**Attachment D**).

The proposal is due for finalisation on 7 November 2018.

The Gateway determination required Port Stephens Council to: remove reference to section 9.1 Direction 5.1 Implementation of Regional Strategies, which was revoked in October 2017, and replace with Direction 5.10 Implementation of Regional Plans; consider amending the height of building map consistent with the surrounding R5 land; and provide further discussion as to why the site is being rezoned. The planning proposal now reflects these requirements.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 26 October to 9 November 2017.

Council advises that 74 submissions were received, with 55 supporting the proposal and 19 objecting to the proposal. Two petitions for and against the proposal were also received.

Those in support noted that the proposal ensures consistency with the surrounding zoning and amenity of the locality and prevents additional subdivision of land that may cause traffic, streetscape and public safety concerns.

Those objecting to the proposal noted that the land may currently be subdivided without significant amenity impacts and that the landowner should be able to rely on existing zoning and minimum lot size to develop the land.

The Department's consideration of issues raised in submissions is detailed in section 9 of this report.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult the federal Department of Defence and the NSW Rural Fire Service (RFS) in accordance with the Gateway determination. Council has consulted these authorities.

Department of Defence

The Department of Defence supports the proposal and makes some suggestions on development in the locality referencing noise attenuation measures and section 149(5) notation (now section 10.7), height of buildings and structures above 15m to be referred to the Department, and the minimisation of large water bodies (**Attachment E**).

Council acknowledges the Department of Defence's advice. No further action is required by Council at this stage.

NSW Rural Fire Service

RFS raises no objections to the proposal, subject to development of the land complying with *Planning for Bushfire Protection 2006* (**Attachment F**).

Council acknowledges RFS's advice. No further action is required by Council at this stage.

8. POST-EXHIBITION CHANGES

No post-exhibition changes have been made to the proposal.

9. ASSESSMENT

The planning proposal seeks to rezone two lots of land from R2 Low Density Residential to R5 Large Lot Residential, increase the minimum lot size from 450m² to 2000m² and change the height of building from 9m to no height.

The proposal seeks to achieve a consistent zoning and minimum lot size and prevent subdivision into smaller lots.

Issues raised in submissions related to amenity, traffic, streetscape, public safety concerns and that the existing landowners should be able to rely on the existing planning controls to develop their land.

Traffic or public safety impacts would not result should the land be subdivided per the existing controls were the planning proposal to not proceed.

The planning controls set out what is potentially possible on the land, subject to the development assessment process and the consent authority issuing its approval.

Whether those existing planning controls are appropriate in terms of impact on amenity, streetscape and established settlement pattern was a common theme in submissions and is the key issue here. The assessment of these matters, and in turn, whether it is appropriate to amend the planning controls as proposed by Council is considered below.

Background

The planning proposal is informed by several Council decisions that are relevant to the planning outcomes sought for the site and locality.

In 2012, Council sought to rezone the land from 1(C5) to R2 under the Pacific Dunes planning proposal to create a more intense or denser residential 'entrance' to the estate on the two sites.

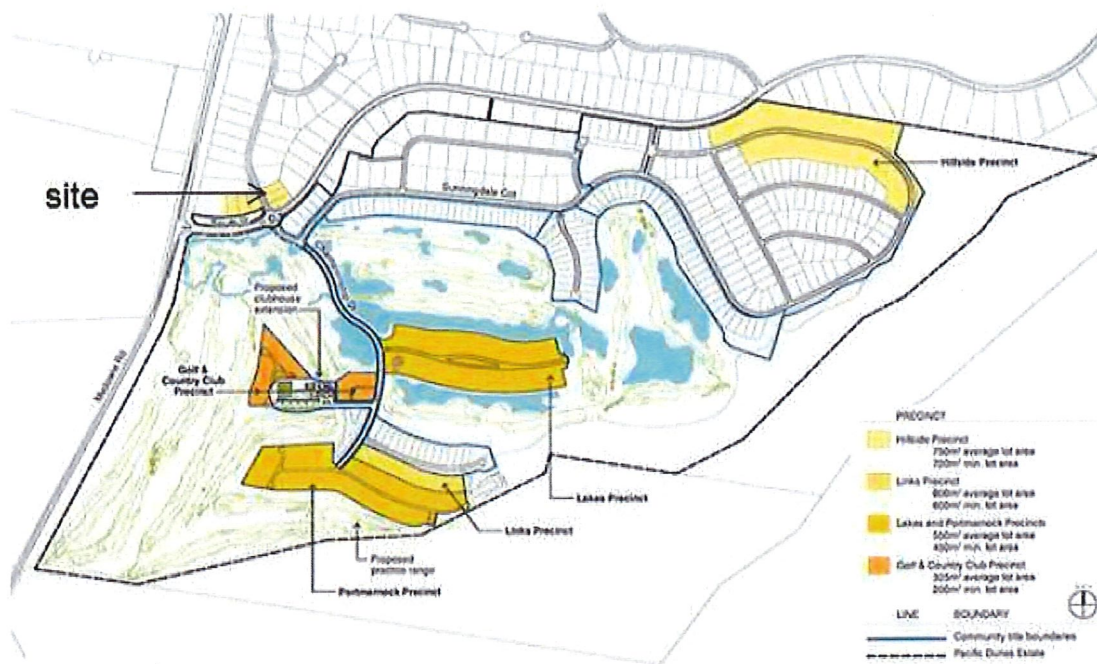


Figure 6: Pacific Dunes precinct map.

The land was subsequently zoned R2 with a minimum lot size of 450m², with surrounding lands zoned R5 with a minimum lot size of 2000m².

As the Pacific Dunes precinct map envisages at least three lots on each site, and as each site presently contains a single-storey dwelling, the land has not been developed as envisaged by the Pacific Dunes precinct map.

Following a development application for the subdivision of the 111 South Street site into two lots, councillors considered community submissions and reviewed the zoning history of the sites.

At a meeting in May 2017, Council resolved to commence the current rezoning process from R2 to R5 and increase the minimum lot size from 450m² to 2000m² on 111 South Street and 1C Sylvan Avenue.

111 South Street

This land has an area of 2262m², which is consistent with the proposed minimum lot size.

In March 2017, Council resolved to refuse a subdivision of 111 South Street into two lots. This decision was rescinded in May 2017 without a replacement decision. The refusal was confirmed on 11 July 2017.

On 13 June 2018, the refusal was upheld on appeal in the NSW Land and Environment Court. The court held that the subdivision of the land was not consistent with the established streetscape character.

Following the finalisation of the South Street court case, Council requested the Department finalise the planning proposal.

The planning proposal is consistent with the outcome of the court appeal.

1C Sylvan Avenue

This land has an area of 3017m², which is consistent with the proposed minimum lot size.

In December 2017, Council approved the subdivision of 1C Sylvan Avenue into two allotments of 951m² and 2078m² (Figure 7, next page). This subdivision is partially inconsistent with the proposed minimum lot size.

To the Department's knowledge, this subdivision has not progressed past development consent stage. Any future residential development on the site will require consistency with *Clause 4.2B Erection of dwelling houses on land in certain rural, residential and environment protection zones* of the Port Stephens LEP 2013 and may need to seek a variation to the development standard for minimum lot size per *Clause 4.6 Exceptions to development standards*. Council would need to seek concurrence from the Department when determining such an exception.

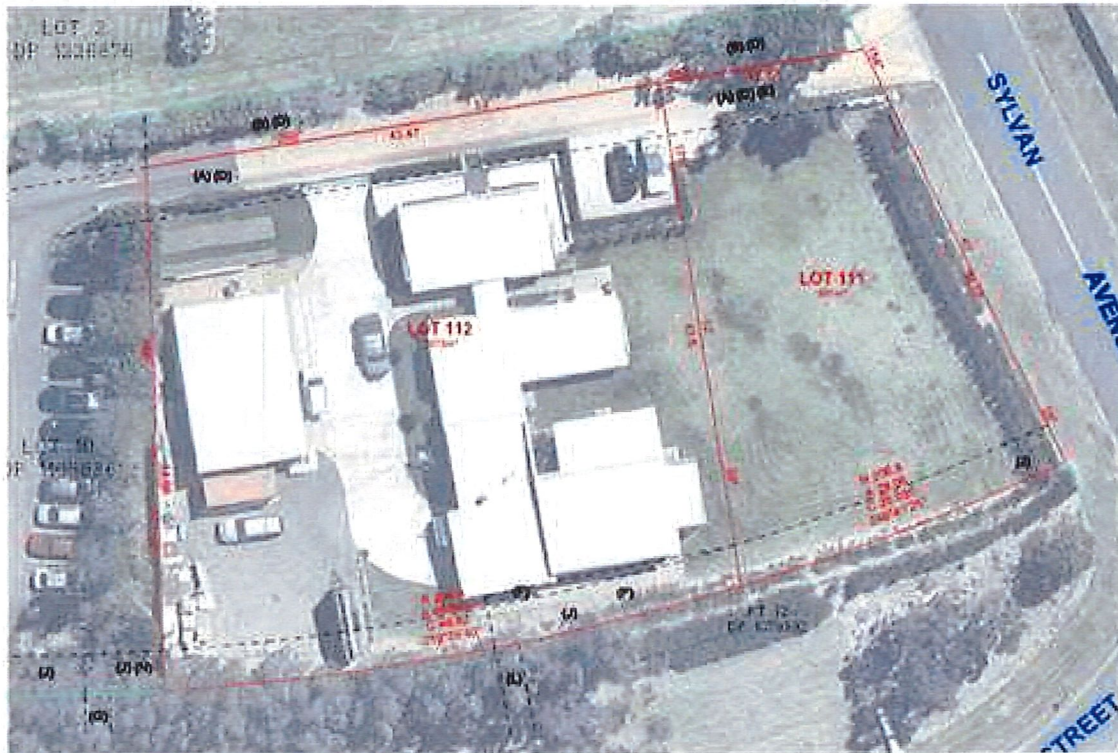


Figure 7: Sylvan Avenue approved subdivision.

Department assessment

The decision of the Land and Environment Court confirming that subdivision of 111 South Street is not consistent with the streetscape character has been considered in the assessment. This decision has not been appealed.

The wider locality consists of a mix of large-lot residential development to the north (2000m²) and smaller suburban residential development (200m² to 600m²) to the south-east (**Attachment A2**). The surrounding locality informs the character, streetscape character and setting of the site.

When determining the character of an area, consideration of existing and likely future context is required. The existing character is established by built form and scale and the subdivision pattern.

The likely future character of the area is established by the current R2 and R5 zoning. The area has been developed to its potential. Other than an example of infill dual occupancy development, there are minimal opportunities for significant redevelopment that would change the large-lot residential character of the area.

The court judgement and assessment of the character of the area indicate that the planning proposal provides satisfactory justification for the change in zoning, minimum lot size and building height. The proposal has merit and should proceed.

A more detailed evaluation of current and future character is described in **Attachment A2**.

Section 9.1 Directions

The Secretary's delegate agreed on 7 August 2017 that any inconsistency with section 9.1 Directions 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulfate Soils was justified in accordance with the terms of the Directions.

3.5 Development Near Licensed Aerodromes

The planning proposal relates to land that is not affected by the Australian Noise Exposure Forecast (ANEF) but is affected by an obstacle limitation surface (OLS) of the Williamtown aerodrome and is near the airbase. Consultation with the federal Department of Defence indicates support for the proposal.

The proposal does not include development standards relating to the OLS, particularly structures above 15m in height. Considering the proposed residential zoning, context of the land, and advice from the Department of Defence, the proposal's inconsistency with this Direction is of minor significance.

4.4 Planning for Bushfire Protection

The land is bushfire prone. Written advice from RFS indicates no objections to the progression of the planning proposal. The planning proposal is inconsistent with this Direction as it does not include hazard management provisions; however, this inconsistency is of minor significance given RFS's advice.

5.10 Implementation of Regional Plans

The planning proposal has been updated to refer to this new section 9.1 Direction. The proposal is consistent with the relevant intent of the Hunter Regional Plan 2036, particularly Goal 1 – The leading regional economy in Australia, Goal 4 – Greater housing choice and jobs, Direction 13 – Plan for greater land use compatibility and Direction 22 – Promote housing diversity and is consistent with this Direction.

State environmental planning policies

SEPP No 44 – Koala Habitat Protection

The Port Stephens Comprehensive Koala Plan of Management (CKPOM) is applied for the purposes of implementing SEPP 44.

The site is identified by the CKPOM as a 'linkage over cleared land'. It is zoned R2 Low Density Residential and is partly cleared. The proposal to decrease the residential density on the site maintains the classification and is consistent with the CKPOM.

The draft LEP is consistent with the SEPP.

SEPP (Exempt and Complying Codes) 2008

The exempt provisions of the SEPP will continue to apply to the land.

Due to the rezoning of the land from R2 Low Density Residential to R5 Large Lot Residential, Part 3 – Housing Code and Part 3B Low Rise Medium Density Housing Code will cease to apply to the land. However, the Rural Housing Code (Part 3A) will apply.

No significant issues arise from the rezoning of the land from R2 to R5 under the SEPP. The planning proposal has the effect of removing inconsistencies with surrounding sites for complying development.

State, regional and district plans

Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036

The proposal is consistent with the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036 as it provides greater land-use compatibility (Direction 13 of the Hunter Regional Plan), promotes housing diversity (Direction 22 of the Hunter Regional Plan), and delivers housing close to jobs and services (Outcome 3 of the Greater Newcastle Metropolitan Plan).

Community Strategic Plan and local strategies

Council advises that the proposal is consistent with: the Port Stephens Integrated Strategic Plan 2022, which encourages a range of lot sizes and housing types; the Port Stephens Planning Strategy 2011-2036 as the proposal is a minor rezoning within an existing urban area; and the Medowie Planning Strategy 2016 as the site is within an urban growth area and the proposal is consistent with the large-lot residential context of this area of Medowie.

Port Stephens LEP 2013

The rezoning affects permissible residential uses on the site.

Currently permitted with consent in the R2 zone are multi-dwelling housing, semi-detached dwellings and seniors housing.

These uses are prohibited in the R5 zone, although seniors housing would be subject to SEPP (Housing for Seniors or People with a Disability) 2004.

The planning proposal has the effect of removing inconsistencies with surrounding sites for permissible development, minimum lot size and building heights.

10. MAPPING

The draft LEP will be implemented through mapping amendments to the land-use zoning, lot size and height of building maps. The maps have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment H**). Council confirmed on 27 September 2018 that it agreed with the draft and the plan should be made (**Attachment I**).

12. PARLIAMENTARY COUNSEL OPINION

On 4 October 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the proposal is consistent with the state planning framework;
- the proposal is consistent with the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036 by providing greater land-use compatibility and housing diversity;
- Council planning controls are adequate to manage the impacts of bushfire-prone land and acoustic and height impacts on the operations of Williamtown Airport;
- the character and streetscape of the locality will be maintained; and
- there were no public agency objections.



5/11/2018

Monica Gibson

Director Regions, Hunter