

# Planning Proposal

## South Street, Medowie

(Adopted by Council Resolution 12 Dec 2017)

Proposed amendment to the Port Stephens  
Local Environmental Plan 2013  
Lot 14 DP 1079392 (111 South St, Medowie)  
Lot 11 DP 1105086 (1C Sylvan Ave, Medowie)

## FILE NUMBERS

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**Council:** PSC2017-01859  
**Department:** PSC\_2017\_PORTS\_003\_00

## SUMMARY

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**Subject land:** 111 South Street (Lot 14 DP 1079392)  
1C Sylvan Avenue (Lot 11 DP1105086)  
**Subject land area:** Lot 14 DP 1079392 - 2262m2  
Lot 11 DP 1105086 - 3017.43m2  
**Existing zoning and min. lot size:** R2 Low Density Residential & 450m2  
**Proposed zoning and min. lot size:** R5 Large Lot Residential & 2000m2  
**Existing height of building:** 9 metres  
**Proposed height of building:** No height controls (consistent with the adjacent R5 land).

## BACKGROUND

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The planning proposal seeks to implement a 9 May 2017 Notice of Motion that Council will commence the process of rezoning 111 South Street and 1C Sylvan Avenue from the existing zoning R2 Low Density Residential to R5 Large Lot Residential with a minimal lot size of 2,000m2 (**ATTACHMENT 1**):

*"That Council commence the process of rezoning 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) from the current zoning R2 to R5. This provides consistencies with surrounding zoning and prevents subdivision into smaller lots, creating traffic parking hazards that have a significant impact on the amenity and streetscape of the surrounding area."*

A planning proposal was previously submitted to Council in February 2012 on behalf of Pacific Dunes Estate, which included the subject site. The intent of the rezoning was to facilitate higher densities in Pacific Dunes Estate, by rezoning land 2(a) Residential and lowering the applicable minimum lot size. Council endorsed the proposal with a minimum lot size of 700m2. Council then resolved to prepare the planning proposal on 24 April 2012 and resolved to proceed with the planning proposal post-exhibition on 13 August 2013. Both resolutions were unanimous.

At some time between the exhibition period and gazettal, an administrative error resulted in the minimum lot size being reduced to 450m2. The error was not realised until after gazettal of the planning proposal which occurred concurrently with the Port Stephens Local Environmental Plan 2013 (LEP2013). To date, this error has not been rectified and the current minimum lot size for the site remains at 450m2. It is however noted that there are plans to rectify the matter as part of the forthcoming housekeeping LEP. In respect to the intended minimum lot size endorsed by Council in 2013, the Development Applicant (DA No. 16-2016-862-1) has proposed a subdivision where each lot exceeds 700m2. The rezoning from R2 minimum lot size

450m2, to R5 minimum lot size 2000m2, will allow the two sites to be consistent with the zoning and minimum lot size of the adjacent properties in the immediate area.

The Department of Planning and Environment (as delegate of the Minister for Planning) determined under Section 56(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) that the amendment to the LEP 2013 should proceed subject to the following conditions:

- Amend Section 117 Direction 5.1 Implementation of Regional Strategies to Direction 5.10 Implementation of Regional Plans;
- Consider amending the Height of Building Map to be consistent with the surrounding R5 land; and
- Providing further discussion as to why the site is being rezoned, rather than rectifying the mapping error.

Community consultation was required under Sections 56(2) (c) and 57 of the EP&A Act. The planning proposal was classified as low impact. Public consultation took place for 14 days from 26 October 2017.

The Department of Defence and the NSW Rural Fire Service raise no objection to the planning proposal (refer to *SECTION D – State and Commonwealth interests*).

On 12 December 2017 a post-exhibition report was considered by Council. The Council resolved to:

- 1) *"Acknowledge the submissions received during the public exhibition of a proposal to rezone Lot 14, DP 1079392 (111 South Street) and Lot 11, DP 110 [sic] (1C Sylvan Avenue) (ATTACHMENT 1) from R2 Low Density residential and a Minimum Lot Size of 2,000sqm.*
- 2) *Adopt the proposal as exhibited and in accordance with the Environmental Planning and Assessment Act 1979 (s59) (NSW) and forward the proposal to the NSW Department of Planning and Environment with a request that the NSW Minister for Planning amend the Port Stephens Local Environmental Plan 2013 to implement the proposal."*

At a Council meeting on 13 February a Rescission Motion was put forward to:

*"Rescind its decision of 12 December 2017 on Item No. 3 Planning Proposal – Rezone and amend the minimum lot sizes at 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086), Medowie."*

The motion was lost.

### **Site Description**

The sites are adjacent corner lots located on the intersection of South Street and Sylvan Avenue (**ATTACHMENT 2**).

The site is zoned R2 Low Density Residential and has a minimum lot size of 450m<sup>2</sup> under the *Port Stephens Local Environmental Plan 2013* (LEP2013). Both sites contain single storey dwellings.

The site's topography rises gently from South Street to the north. Surrounding developments comprise predominantly detached single dwellings of both one and two storeys in height.

The land to the south of the subject site is zoned R2 Low Density Residential, with a minimum lot size of 600m<sup>2</sup> under the LEP2013. The land to the north is zoned R5 Large Lot Residential with a minimum lot size of 2,000m<sup>2</sup> under the LEP2013. A development application (DA) 16-2015-682-1 for three dual occupancies (six single storey dwellings) across three lots at 1A, and 1D Sylvan Avenue was approved on 29 January 2016. These allotments are located to the west of the subject site, directly across the road from the property at 8 Sylvan Avenue. This land is zoned R5 Large Lot Residential with a minimum lot size of 2,000m<sup>2</sup>.

A Development Proposal has been lodged proposing a one into two Torrens title subdivision and a shed at 111 South Street, Medowie. This Development Proposal was not supported by Council at their Meeting on Tuesday, 11 July 2017.

The site was previously zoned as 1C (Rural Small Holdings) under the Port Stephens Local Environmental Plan 2000, with an accompanying minimum lot size of 2,000m<sup>2</sup>.

### **PART 1 – Objective of the proposed Local Environmental Plan**

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The objective of the planning proposal is to implement the Port Stephens Council Notice of Motion dated 9 May 2017.

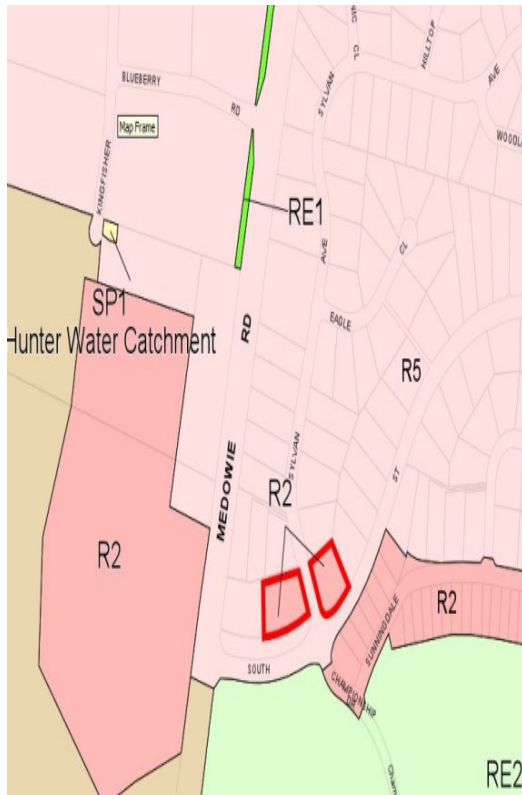
### **PART 2 – Explanation of the provisions to be included in proposed LEP**

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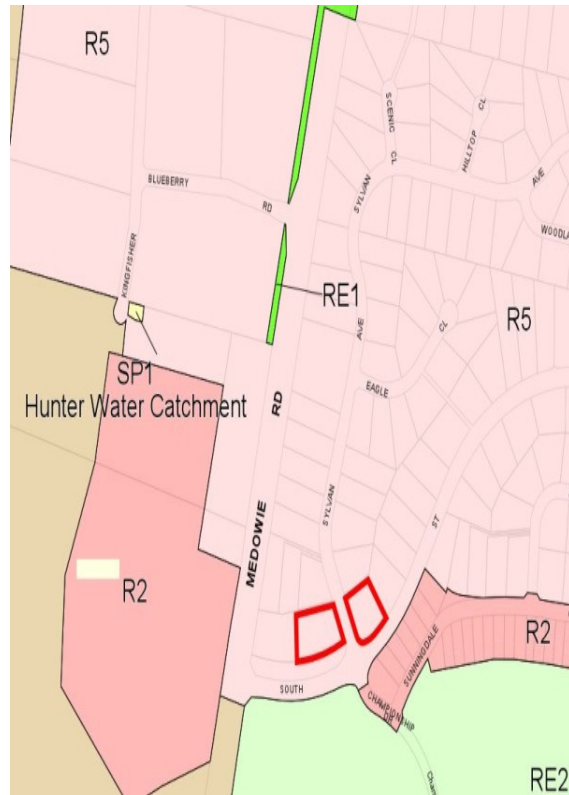
The objectives of this planning proposal will be achieved by:

- Amending the Port Stephens LEP 2013 Land Zoning Map for Lot 14 DP 1079392 from R2 - Low Density Residential to R5 - Large Lot Residential in accordance with (**ATTACHMENT 3 and ATTACHMENT 4**); and
- Amending the Port Stephens LEP2013 Minimum Lot Size Map for Lot 14, DP 1073992 and Lot 11, DP 1105086 from 450m<sup>2</sup> to 2000m<sup>2</sup> in accordance with (**ATTACHMENT 5 and ATTACHMENT 6**).
- Amending the Port Stephens LEP2013 Minimum Height of Buildings Map for Lot 14, DP 1073992 and Lot 11, DP 1105086 to remove the 9m building height to create consistent controls with the adjacent R5 land. (**ATTACHMENT 7 and ATTACHMENT 8**).

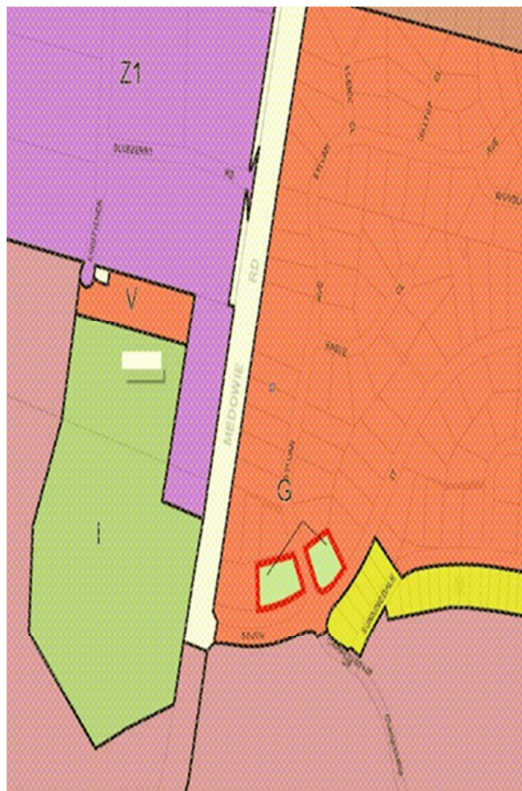
**FIGURE 1: Existing Land Zoning Map**



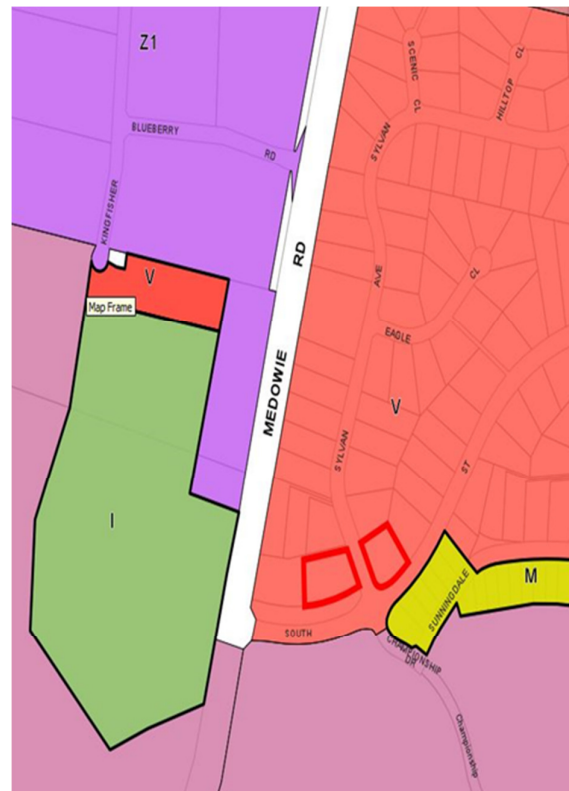
**FIGURE 2: Proposed Land Zoning Map**



**FIGURE 3: Existing Minimum Lot Size**



**FIGURE 4: Proposed Minimum Lot Size**



## **PART 3 – Justification for the Planning Proposal**

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### **SECTION A – Need for the Planning Proposal**

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

The planning proposal is not the direct result of any strategic study or report. The planning proposal is the result of a Notice of Motion to Council on 9 May 2017, in which Council resolved to immediately prepare the planning proposal for submission to Gateway Determination (**ATTACHMENT 1**). The rezoning of the site from R2 Low Density Residential to R5 Large Lot Residential and by increasing the permitted minimum lot size from 450m<sup>2</sup> to 2,000m<sup>2</sup> will achieve a consistent zoning minimum lot size development outcome for land on the northern side South Street and prevent subdivision into smaller lots.

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

The planning proposal is the only means of achieving the desired outcome, as an amendment to the Port Stephens LEP2013 is required.

### **SECTION B – Relationship to Strategic Planning Framework**

#### ***3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?***

##### Hunter Regional Plan 2036 (HRP)

A key direction of the Hunter Regional Plan 2036 is the promotion of housing diversity. This includes guidance in local land use strategies for expanding rural villages and rural-residential development so that such developments will:

- Not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;
- Not impact on drinking water catchments;
- Not result in greater natural hazard risk;
- Occur on land that is unlikely to be needed for future development; and
- Contribute to the conservation values or the establishment of important corridor linkages.

The proposed amendment facilitates the development of this site for residential development and will facilitate the development of the site for residential purposes, consistent with the Hunter Regional Plan policies which encourage residential infill development and increased housing choice.

The planning proposal is consistent with the Hunter Regional Plan, by providing housing opportunities near essential services and in an area with sufficient infrastructure already in place.

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

Integrated Strategic Plan (Port Stephens 2022) (ISP)

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

Port Stephens Planning Strategy 2011-2036 (PSPS)

The Proposal is consistent with the directions adopted by the PSPS. The PSPS identifies that additional housing is required for the expected population growth of the area.

Medowie Planning Strategy 2016 (MPS)

The sites are located within an urban growth area for the purposes of the Medowie Planning Strategy and are not specifically identified.

***Is the planning proposal consistent with applicable state environmental planning policies?***

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided below.

**Table A: Relevant State Environmental Planning Policies**

<b>SEPP 44 Koala Habitat Protection</b>
<p>The <i>Port Stephens Comprehensive Koala Plan of Management</i> (CKPOM) is applied in Port Stephens LGA for the purposes of implementing SEPP 44. The relevant objectives of the CKPOM are to:</p> <ul style="list-style-type: none"><li>• Evaluate and rank habitat throughout the LGA;</li><li>• Identify priority conservation areas and strategies to protect significant habitat and population;</li><li>• Identify threats;</li><li>• Provide for the long-term survival of populations by addressing conservation strategies to effectively address each of the threats;</li><li>• Provide for the restoration of degraded areas;</li><li>• Ensure that adequate detail is provided with development applications in order to assess, minimise and ameliorate likely impacts;</li><li>• Provide guidelines and development standards to protect koalas and habitat;</li><li>• Provide for the effective implementation and monitoring of the CKPOM.</li></ul> <p>Council koala habitat planning mapping indicates that the site has been classified as a linkage over cleared land (<b>ATTACHMENT 7</b>).</p>

Preliminary review is that the proposal meets the performance criteria for rezoning proposals of the CKPOM which are that development will:

- a) Not result in development within areas of Preferred Koala Habitat
- b) Allow for only low impact development within areas of Supplementary Koala Habitat.
- c) Minimise the removal of any individuals of PKH food trees, wherever they occur on the site.
- 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.

Under the above circumstances and the characteristics of the site and surrounding development, any inconsistency with the CKPOM performance criteria for rezoning is minor.

**Any inconsistency of the planning proposal with the CKPOM performance criteria for rezoning is minor.**

#### **SEPP 55 Remediation of Land**

The Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment by:

- (a) Specifying when consent is required, and when it is not required, for a remediation work, and
- (b) Specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
- (c) Requiring that remediation work meet certain standards and notification requirements.

#### **Assessment**

The existing use of the site as rural residential development indicates that the site is not contaminated.

**The existing use of the site as residential development and its proposed continued use for residential development do not trigger the need for a preliminary investigation for contamination under this SEPP.**



## **5. Is the planning proposal consistent with applicable Ministerial Directions?**

An assessment of the planning proposal against the relevant s.117 Directions is provided in the following table:

### **Direction 3.1 Residential Zones**

#### **Objectives**

The objectives of this Direction are: to encourage a variety and choice of housing types to provide for existing and future housing needs; To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; To minimise the impact of residential development on the environment and resource lands.

#### **When this direction applies**

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:

- an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- any other zone in which significant residential development is permitted or proposed to be permitted.

#### **What a relevant planning authority must do if this direction applies**

A planning proposal must include provisions that encourage the provision of housing that will:

- broaden the choice of building types and locations available in the housing market, and
- make more efficient use of existing infrastructure and services, and
- reduce the consumption of land for housing and associated urban development on the urban fringe, and
- be of good design.

A planning proposal must, in relation to land to which this direction applies:

- contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- not contain provisions which will reduce the permissible residential density of land.

## **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which:
  - gives consideration to the objective of this direction, and
  - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
  - is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- of minor significance.

## **Assessment**

This direction applies because the planning proposal affects land within an existing residential zone. The sites already have existing dwellings. In amending the land zoning and minimum lot size, future development of the sites will be affected thus, the variety and choice of housing types for future needs will be inhibited. For this reason, the objectives of this direction have not been met.

**The inconsistency with this direction is understood to not be of minor significance.**

## **Direction 3.4 Integrating Land Use and Transport**

### **Objectives**

The objective of this Direction is to ensure that development achieves the following objectives: Improving access to housing, jobs and services by walking, cycling and public transport; Increasing the choice of available transport and reduce dependence on cars; Reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car; Supporting the efficient and viable operation of public transport services; Providing for the efficient movement of freight.

### **When this direction applies**

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, including land zoned for residential, business, industrial, village or tourist purposes.

### **What a relevant planning authority must do if this direction applies**

A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which: gives consideration to the objective of this direction; and identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites); and is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- of minor significance.

### **Assessment**

This Direction applies because the Planning Proposal relates to land zoned for residential purposes. In the Medowie Planning Strategy, South Street is classified as a collector or local road. Although there is currently limited access to public transport and paths/cycleways in the immediate vicinity of the site, there are future provisions in the Medowie Planning Strategy of a bus stop to be located on the corner of Medowie Road and South Street. A shared-use path has also been proposed along Medowie Road connecting residential areas to the Medowie Town Centre.

**The Planning Proposal satisfies this direction with the Medowie Strategy addressing future connectivity via public transport and cycle/pathways to the Medowie Town Centre.**

## **Direction 3.5 Development Near Licensed Aerodromes**

### **Objectives**

The objectives of this direction are:

- to ensure the effective and safe operation of aerodromes, and
- to ensure that their operation is not comprised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and
- to ensure development for residential purposes of human occupation, if situated with ANEF contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

### **When this direction applies**

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.

### **What a relevant planning authority must do if this direction applies**

In the preparation of a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome, the relevant planning authority must:

- consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome,
- take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth,
- for land affected by the OLS: prepare appropriate development standards, such as height, and allow as permissible with consent development types that are compatible with the operation of an aerodrome
- obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Act.
- A planning proposal must not rezone land: for residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth exceeds 25; or for schools, hospitals, churches and theatres where the ANEF exceeds 20; or for hotels, motels, offices or public buildings where the ANEF exceeds 30.
- A planning proposal that rezones land: for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25; or for hotels, motels, offices or public buildings where the ANEF is between 25 and 30; or for commercial or industrial purposes where the ANEF is above 30; must include a provision to ensure that development meets AS2021 regarding interior noise levels.

### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a strategy which:
- gives consideration to the objective of this direction, and
- identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
- is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- of minor significance.

## **Assessment**

This direction applies because Medowie is in proximity to RAAF Base Williamtown, Newcastle Airport and the Salt Ash Air Weapons Range. The site is not affected by the ANEF 2012 or 2025 maps however, land outside of ANEF contours can still be affected by aircraft noise and activities.

**The planning proposal satisfies this direction. Department of Defence supports the increase in the permitted minimum lot sizes.**

## **Direction 4.1 Acid Sulfate Soil**

### **Objective**

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

### **When this direction applies**

This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.

### **What a relevant planning authority must do if this direction applies**

The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:

- the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or
- such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-General prior to undertaking community consultation in satisfaction of section 57 of the Act.

Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with paragraph (5).

### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- of minor significance.

### **Assessment**

The site is nominated as Class 5 soils, requiring consent for works with 500m of adjacent soil classes. This is the lowest risk classification. The issue will be managed through existing provisions of the LEP.

**The planning proposal is consistent with the direction.**

## **Direction 4.3 Flood Prone Land**

### **Objective**

The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

### **When this direction applies**

This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

### **What a relevant planning authority must do if this direction applies**

A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).

A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial Special Use or Special Purpose Zone.

A planning proposal must not contain provisions that apply to the flood planning areas which: permit development in floodway areas; permit development that will result in significant flood impacts to other properties; permit a significant increase in the development of that land; are likely to result in a substantial increased requirement for government spending on flood mitigation measures, infrastructure or services; or permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.

A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:

- the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or
- the provisions of the planning proposal that are inconsistent are of minor significance.

### **Assessment**

The site has been assessed in accordance with the Medowie Floodplain Risk Management Study and Plan 2016. The site is located on land mapped as being a minimal risk flood planning area: however this flood prone land only consists of approximately 75m<sup>2</sup> in the eastern corner of the site. As only the eastern corner of the lot is mapped as flood prone any development will not create any significant negative impacts on the local flooding characteristics.

**The planning proposal is consistent with the direction.**

## Direction 4.4 Planning for Bushfire Protection

### Objectives

The objectives of this Direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.

### When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

### What a relevant planning authority must do if this direction applies

In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.

A planning proposal must:

- have regard to Planning for Bushfire Protection 2006,
- introduce controls that avoid placing inappropriate developments in hazardous areas, and
- ensure that bushfire hazard reduction is not prohibited within the APZ.

A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:

- provide an Asset Protection Zone (APZ) incorporating at a minimum:
- an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
- an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,
- contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,
- contain provisions for adequate water supply for firefighting purposes,
- minimise the perimeter of the area of land interfacing the hazard which may be developed,
- introduce controls on the placement of combustible materials in the Inner Protection Area.



### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

### **Assessment**

This Direction applies because the site is mapped as Bushfire Prone Land and as a result is considered integrated development and referred to the New South Wales Rural Fire Service. The views of the Rural Fire Service will be sought following a Gateway Determination.

**The planning proposal satisfies this Direction. The RFS has been consulted and raises no objections to the proposal subject to a requirement that the future subdivision of the land complies with *Planning for Bushfire Protection 2006*.**

## **Direction 5.10 Implementation of Regional Plans**

The objective of this Direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

### **When this direction applies**

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

### **What a relevant planning authority must do if this direction applies**

Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

### **Consistency**

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:

- is of minor significance, and
- the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.

### **Assessment**

The planning proposal is consistent with the relevant goal of the Hunter Regional Plan to create greater housing choice and jobs, including for new housing to be focused in established areas through infill development. It is consistent with the relevant direction to create a compact settlement and the associated actions.

**The planning proposal is consistent with this direction.**



## **SECTION C – Environmental, Social and Economic Impact**

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

No. The site does not contain any critical habitat or threatened species, populations or ecological communities, or their habitats.

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

No additional environmental effects are anticipated as a result of this amendment.

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

The planning proposal will reduce subdivision potential and therefore housing, which is believed to have minimal social or economic impacts.

## **SECTION D – State and Commonwealth interests**

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

Reticulated sewer and water infrastructure is available consistent with existing surrounding urban development. This matter will be appropriately addressed at the development application stage.

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

Department of Defence supports the increase in the permitted minimum lot sizes and suggest the following:

- Noise attenuation measures are adopted in the design and construction of any future residential dwellings;
- The height constraints map provides for any structure that may pose a hazard to military aviation within a radius of approximately 15kms of RAAF Base Williamtown and structures higher than 15metres, to be referred to Defence for comment. This includes vegetation and man-made structures including temporary structures such as cranes;
- The usage of artificial water bodies needs to be minimised and controlled in Bird strike Group Area B. If large water bodies are utilised in any future development, the applicant should provide an adequate wildlife management plan to mitigate the risk of bird strike; and
- The Port Stephens Aircraft Noise Policy Section 5, Part 1, Paragraph E, that Council places a notation on any section 149(5) Planning Certificate that the site is likely to be affected by some level of aircraft noise.

NSW RFS raises no objections to the proposal subject to a requirement that the future subdivision of the land complies with *Planning for Bush Fire Protection 2006*.

This includes, but is not limited to:

- Provision of Asset Protection Zones (APZs) within the proposed lots in accordance with Table A2.4;
- Access to be provided in accordance with the design specifications set out in section 4.1.3; and
- Services to be provided in accordance with section 4.1.3.

## **Part 4 – Mapping**

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The proposed mapping amendments to the LEP are included as attachments.

## **Part 5 – Community Consultation**

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The planning proposal was placed on exhibition from 26 October to 9 November 2017. 74 submissions were received.

Some submissions support the exhibited planning proposal to rezone the site to R5 Large Lot Residential and amend the minimum lot size to 2,000m<sup>2</sup>.

Alternatively, some submissions object to the planning proposal and support retaining the existing zoning of R2 Low Density Residential and minimum lot size of 450m<sup>2</sup> (or alternatively 700m<sup>2</sup>).

A detailed summary of submissions and an appropriate planning response is attachment to the post-exhibition Council report of 12<sup>th</sup> December 2017.

No changes were made to the planning proposal as a result of the submissions received.

## **Part 6 – Project Timeline**

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	<b>Task Description</b>	<b>Timeline</b>
1.	Notice of Motion to prepare a planning proposal (R5 Large Lot Residential and 2,000m <sup>2</sup> )	9 May 2017
2.	Gateway Determination issued	7 August 2017
3.	Agency Consultation	October 2017
4.	Public Exhibition	26 Oct to 9 Nov 2017
6.	Council Report – Post Exhibition	12 December 2017
7.	Rescission Motion (Lost)	13 February 2018

## ATTACHMENT 1: Notice of Motion

### MINUTES ORDINARY COUNCIL - 9 MAY 2017

Councillor Ken Jordan left the meeting at 7:54pm, in Open Council.  
Councillor Paul Le Mottee left the meeting at 7:54pm, in Open Council, and did not return to the meeting.

#### NOTICE OF MOTION

ITEM NO. 2

FILE NO: 17/80839

RM8 REF NO: PSC2010-04979

#### REZONING - 111 SOUTH STREET AND 1C SYLVAN AVENUE, MEDOWIE

COUNCILLOR: GEOFF DINGLE  
PETER KAER

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#### THAT COUNCIL:

- 1) Commence the process of rezoning 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) from the current zoning R2 to R5. This provides consistencies with surrounding zoning and prevents subdivision into smaller lots creating traffic parking hazards and have a significant impact on the amenity and streetscape of the surrounding area.

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#### ORDINARY COUNCIL MEETING - 9 MAY 2017 MOTION

113	<p><b>Councillor Geoff Dingle</b> <b>Councillor Peter Kaer</b></p> <p>It was resolved that Council that Council commence the process of rezoning 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) from the current zoning R2 to R5. This provides consistencies with surrounding zoning and prevents subdivision into smaller lots creating traffic parking hazards and have a significant impact on the amenity and streetscape of the surrounding area.</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Peter Kaer and Steve Tucker.

Those against the Motion: Crs Sally Dover, John Morello and John Nell.

**BACKGROUND REPORT OF: DAVID ROWLAND – STRATEGY AND  
ENVIRONMENT SECTION MANAGER**

**BACKGROUND**

Site Context

The subject land 111 South Street (Lot 14 DP 1079392) and 1C Sylvan Avenue (Lot 11 DP 1105086) is located on the north side of the intersection of South Street and Sylvan Avenue. Under the Port Stephens Local Environmental Plan 2013 the current zoning is R2 Low Density Residential with a minimum lot size of 450m<sup>2</sup>. The attached maps show the site context (**ATTACHMENTS 1, 2 and 3**).

The current minimum lot size of 450m<sup>2</sup> for the subject land was not intended. Its application occurred during the transition from the former Port Stephens Local Environmental Plan 2000 to the Port Stephens Local Environmental Plan 2013 (published on 23 December 2013 and commenced 22 February 2014). The minimum lot size was intended to be a minimum 700m<sup>2</sup> to be consistent with previous resolutions of Council (outlined below).

History

Under Port Stephens Local Environmental Plan 2000 the subject land was zoned 1(c5) Rural Small Holdings with a minimum lot size of 2,000m<sup>2</sup>.

In August 2010 Council received a planning proposal to facilitate additional development at Pacific Dunes Estate. The initial planning proposal did not include the subject land.

8 February 2011 Council resolved to defer consideration of the proposal in order to facilitate additional consultation with residents.

February 2012 the proponent lodged a revised planning proposal for the Pacific Dunes Estate. The revised planning proposal added the subject land.

24 April 2012 Council resolved to prepare a planning proposal including to amend the zoning of the subject land to 2(a) Residential and 720m<sup>2</sup> (or 700m<sup>2</sup> for NSW Standard Instrument LEP purposes).

The planning proposal was placed on public exhibition from 21 February to 7 March 2013 including the subject land. Council records indicate that notification letters were sent to adjoining landowners on 20 February 2013. Eleven submissions were received from the community.

13 August 2013 Council resolved to proceed with the planning proposal, post-exhibition, including the subject land with a zoning of 2(a) Residential and a minimum lot size of 700m<sup>2</sup>.

The current minimum lot size of 450m<sup>2</sup> was not intended and occurred with the transition from the former Port Stephens Local Environmental Plan 2000 to the Port Stephens Local Environmental Plan 2013.

It is intended to address the lot size as a part of the forthcoming 'housekeeping' amendment to the Port Stephens Local Environmental Plan 2013 to apply a minimum lot size of 700m<sup>2</sup> consistent with previous resolutions of Council. This process is estimated to take 12 to 18 months.

#### Notice of Motion

Amending the zoning of the subject land to R5 Large Lot Residential and applying a minimum lot size of 2,000m<sup>2</sup> will require a resolution to prepare a separate planning proposal for the subject land (only) and setting out a revised land use planning assessment for the proposed changes to land use planning controls. This process may take approximately 12 months from a Council resolution.

#### **ATTACHMENTS**

- 1) Subject Land.
- 2) Current Zoning.
- 3) Current Minimum Lot Size.

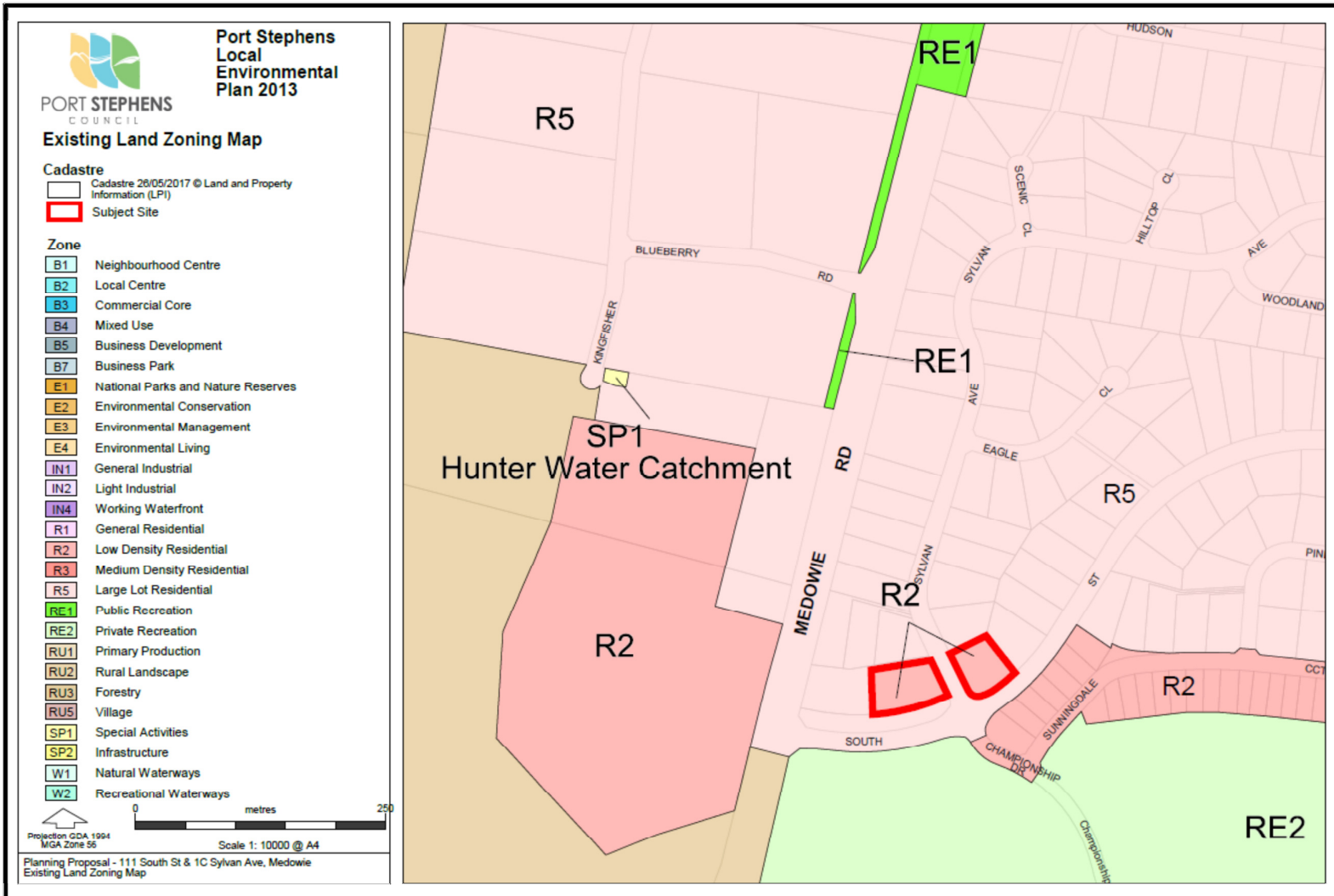


## Attachment 2: Land Subject to the planning proposal

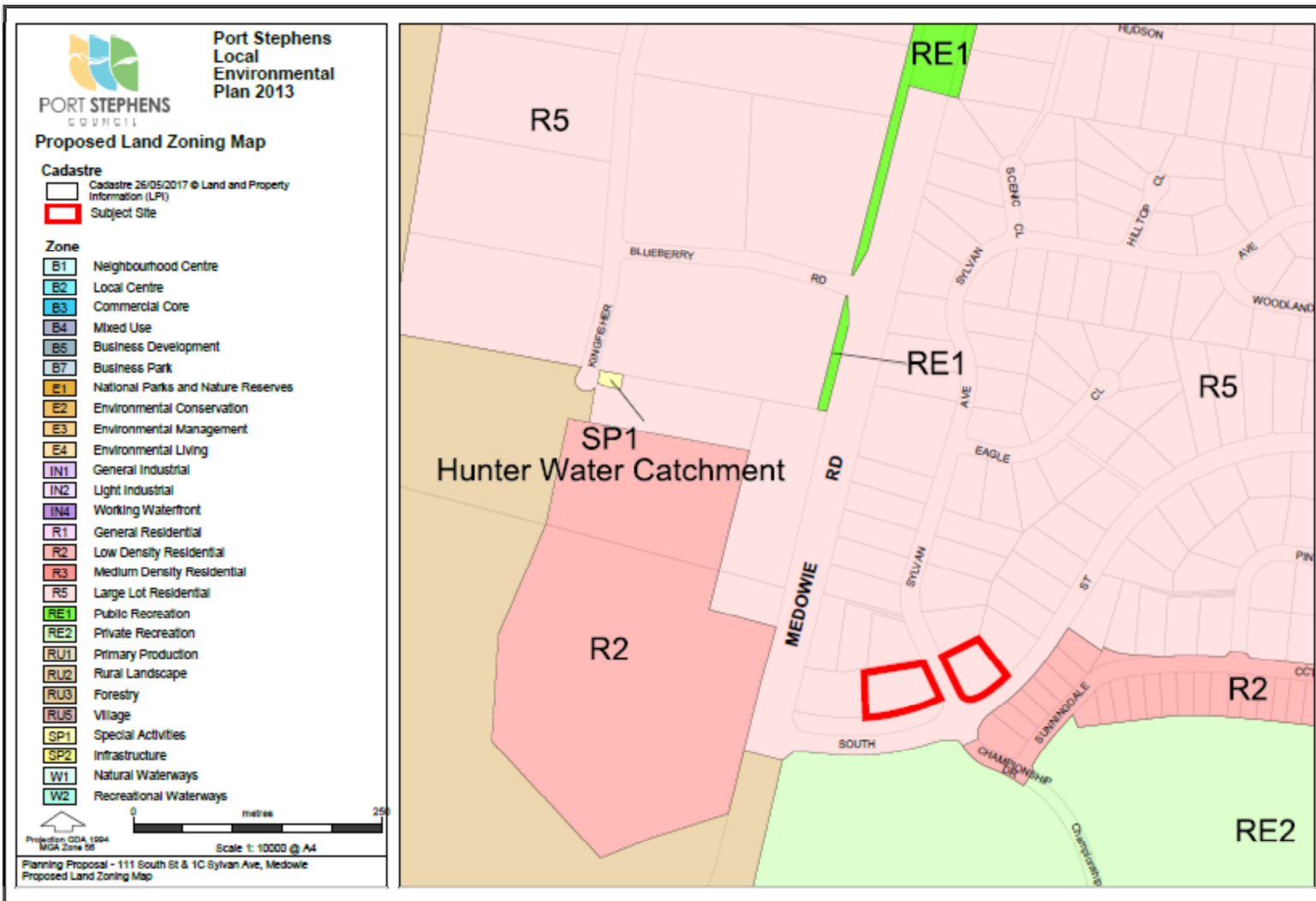




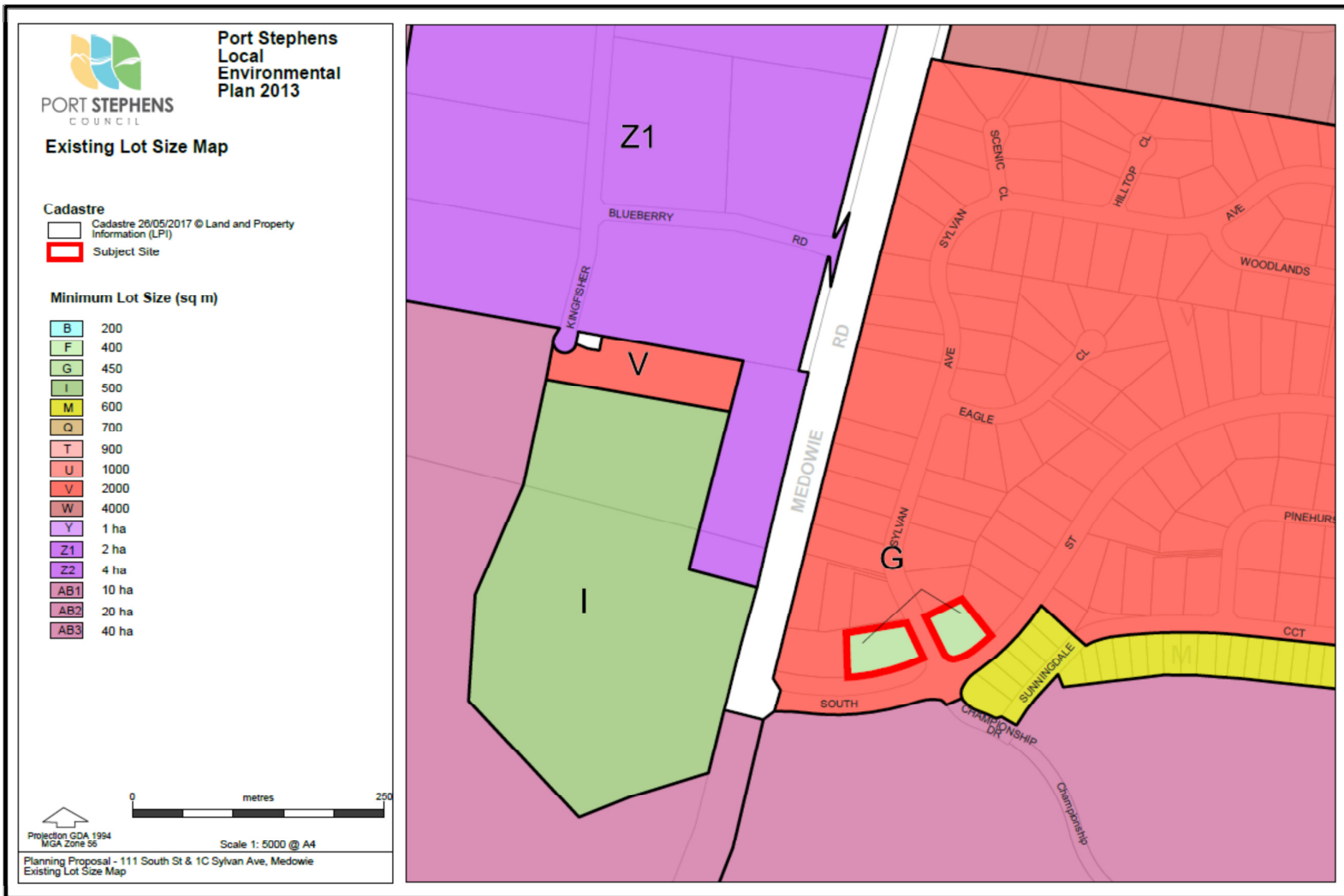
## ATTACHMENT 3: Current Land Zoning Map



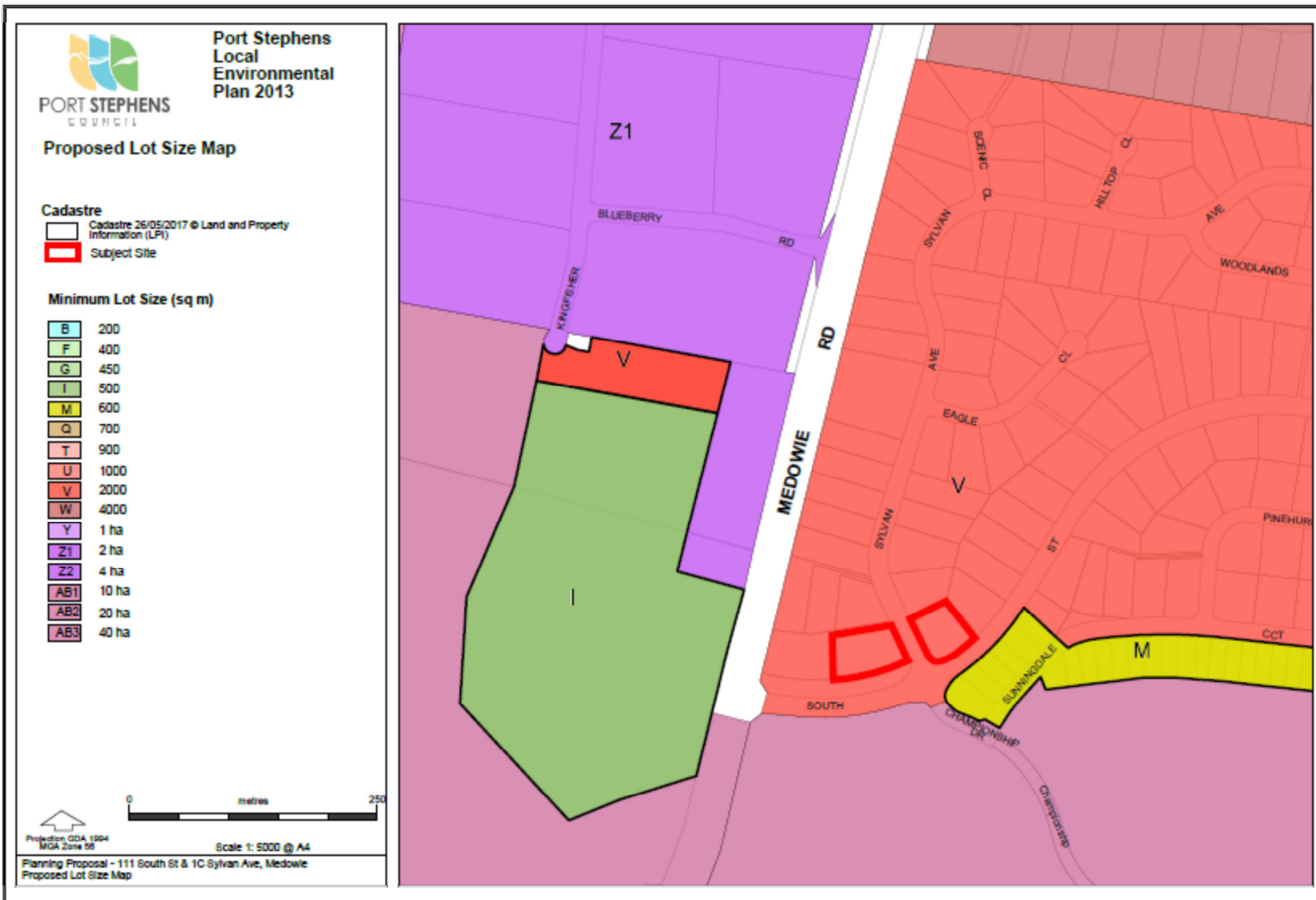
## ATTACHMENT 4: Proposed Land Zoning Map



## ATTACHMENT 5: Current Lot Size Map



## ATTACHMENT 6: Proposed Lot Size Map



## ATTACHMENT 7: Koala Habitat Planning Map

