

Planning and Assessment

IRF20/1475(SF19/116293)

Gateway determination report

LGA	Port Stephens
PPA	Port Stephens Council
NAME	Rezoning to enable bulky goods (300-400 jobs)
NUMBER	PP_2019_PORTS_005_00
LEP TO BE AMENDED	Port Stephens LEP 2013
ADDRESS	2179 - 2213 Pacific Highway, Heatherbrae
DESCRIPTION	Lot 4211, DP 747474 Lot 53, DP 534043 Lots 511, 512 and 513 DP 587997
RECEIVED	29/11/2019 and additional information received on 20/3/2020
FILE NO.	SF19/116293
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal (Attachment A) seeks to rezone the subject site located at 2179 – 2213 Pacific Highway, Heatherbrae from RU2 Rural Landscape to B5 Business Development to enable bulky good retailing.

1.2 Site description

The site covering 5.9 hectares encompasses five separate lots with frontage to the Pacific Highway at Heatherbrae. The site is currently used for residential purposes. This area is characterised by other bulky good retailing and highway service centre types of development.

Some of the lots extend into the flood plain towards the Hunter River, and as a result the planning proposal only includes land above the 1% flood level.

To the south east of the site is the proposed Highway bypass road reservation (Figure 2) that will provide a future local road access when the bypass is constructed.

Further north is an area identified in the *Raymond Terrace and Heatherbrae Strategy 2015-2031* for B5 Business Development zone expansion (see Figure 1). The assessment report discusses why this land has not progressed and this subject is preferred.

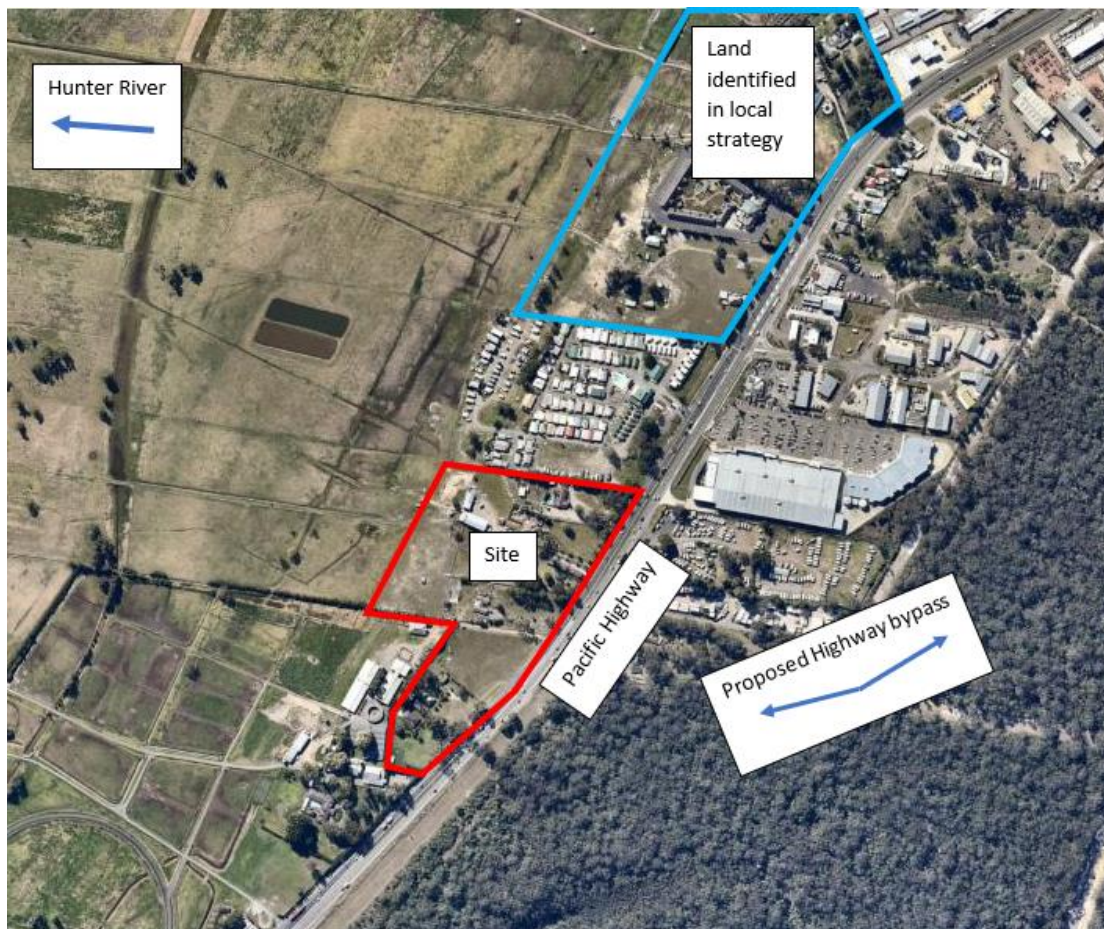


Figure 1 – Site map

1.3 Existing planning controls

Figure 2 identifies the site as currently zoned RU2 Rural Landscape and adjoining a RE2 Private Recreation zone (caravan park) with existing B5 Business Development zoned land to the north east on the eastern side of the Pacific Highway. The site has a minimum lot size of 20ha and does not have a maximum building height provision. The DCP provides for the majority of the applicable planning controls.



Figure 2 – Planning controls

1.4 Surrounding area

The site is located 4.5km south of the strategic centre of Raymond Terrace and forms the southern edge of the bulky goods precinct in Heatherbrae.

Land to the south of the site includes an operational farm and a small acreage homes. As mentioned above, to the east of the site will be the location of the new highway bypass and interchange.

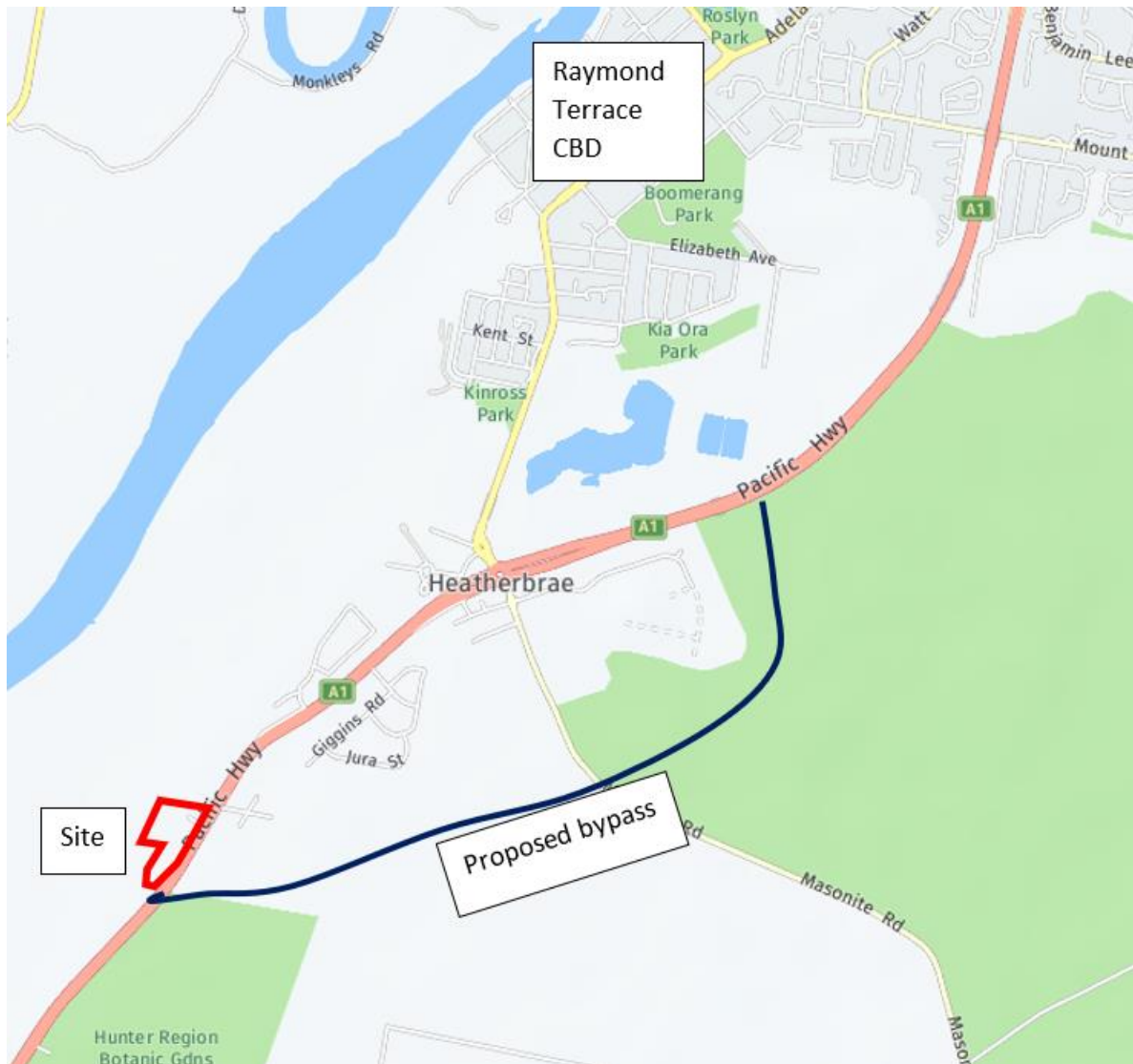


Figure 3 – site context

1.5 Summary of recommendation

The planning proposal has merit and justifies why this is the most appropriate location to extend the B5 Business Development zone in Heatherbrae to enable an expansion of the bulky goods precinct. There are no significant environmental, economic or social implications associated with this proposal and it should proceed subject to appropriate conditions. The proposal is generally consistent with both local and regional strategies.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the proposal is to rezone the site to B5 Business Development zone to enable bulky goods retailing.

2.2 Explanation of provisions

The proposal will amend the LEP through the following map amendments:

- Rezone the site from RU2 Rural Landscape to B5 Business Development;
- Lot size to remove the lot size of 29ha from the map
- Urban release area – to map the site.

The planning proposal notes that this proposal would be supported by a site-specific Development Control Plan (DCP). It is recommended as a condition of Gateway that the site specific DCP be exhibited concurrently with the planning proposal.

2.3 Mapping

The following LEP maps are proposed to be amended (see Figures 4 – 6):

- Land zoning;
- Minimum lot size; and
- Urban Release Area.

It is noted that the maps included in the planning proposal are indicative and subject to a site survey. It is recommended as a condition of Gateway that the proposed maps are updated with the outcomes of the site survey prior to exhibition.



Figure 4 – Proposed zoning map



Figure 5 - Proposed lot size map



Figure 6 – Proposed Urban release area map

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal responds to a need for additional land for bulky goods retailing in the Heatherbrae precinct. The *Raymond Terrace and Heatherbrae Strategy* contains a number of directions and actions that facilitate Heatherbrae as a key bulky goods destination for the local government area.

The need for additional bulky goods land is also supported by the 2012 Raymond Terrace and Heatherbrae Economic Land Use Study (HillPDA, 2012). If rezoned, the site will provide for an estimated additional 10 years of supply.

The above study identified land further north of the subject site (see Figure 1) to meet this need, however this land has existing businesses that are considered unlikely to change to support the demand for more bulky good retail. As a result, the subject land in this proposal is better suited to provide for this demand. This justification is supported by the Department's Regional Team.

The site is located close to the proposed Pacific Highway bypass and traffic issues associated with the bypass and interchange at Tomago have been discussed with Transport for NSW who have not raised any issues with the proposal.

The proposal is the best means of achieve the intended outcomes of providing more B5 zoned land to enable bulky goods retailing.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal is consistent with the state planning frameworks and has considered and is consistent with the 'Right Place for Business and Services'.

4.2 Regional

Hunter Regional Plan

- *Direction 6* – Consistent and assists in implementing Actions 6.3 enabling economic diversification and 6.4 by promote the growth of industries leveraging off the Pacific Highway accessibility. The proposal seeks to build on an existing employment cluster within the LGA.
- *Direction 10* – Consistent and assists in implementing Action 10.1 protecting agricultural enterprises from incompatible land uses. Each subject lot has an existing dwelling. The proposed rezoning will reduce the potential for land use conflict with the existing agricultural activities usually associated with residential development. It is noted that the proposal excludes the flood prone residue portion of the site land is not mapped as BSAL lands. It is recommended that the proposal be updated to include a revised map that identifies both the flood prone land, surrounding BSAL land and the proposed zoning boundary to demonstrate this.
- *Direction 13* – As per Direction 10 above, housing and the proposed development does not encroach into the agricultural area and is unlikely to impact on agricultural uses.
- *Direction 23* – Consistent and assists in implementing Action 23.5 whereby the expansion of the B5 zoned area at Heatherbrae will support the existing bulky goods cluster and the strategic centre of Raymond Terrace.

- *Direction 24* - Consistent and assists in implementing Action 24.1 in relation to reducing and minimising land use conflict. The proposal also demonstrates that there is sufficient demand to support additional bulky goods retailing in the area.

Greater Newcastle Metropolitan Plan

- *Strategy 7* – Respond to the changing land use needs of the new economy. The proposal is consistent and assists in implementing Action 7.1 by providing an adequate supply of employment land in an accessible location and will provide for additional jobs in proximity to residential areas.
- *Strategy 13* – Protect rural amenity outside urban areas. The proposal is consistent with Action 13.1 as the proposal does not enable any further residential development, thus manages potential land use conflict. The most productive land (flood plain land) is also retained in accordance with this action. The proposal does not respond to this Strategy adequately and should be updated prior to public consultation.
- *Strategy 23* – Protect major freight corridors. The proposal is consistent and assists in implementing Action 23.1 and consultation with Transport for NSW is required to ensure access does not conflict with future plans for a bypass of this area.

4.3 Local

The proposal considers the *Raymond Terrace and Heatherbrae Strategy 2015-2031* which was supported by an economic land use study that identified an undersupply of bulky goods retail areas. The Strategy identified the need for 4.5ha of B5 zoned land.

Whilst the Strategy identified land further north of this site, the proposal outlines the reasons why the preferred site has not progressed and why the subject land is better suited. This site is 5.9ha and generally consistent with this need for an additional 4.5ha.

The Port Stephens Local Strategic Planning Statement (LSPS) has been publicly exhibited and has been endorsed by Council. The draft LSPS identified Heatherbrae as a major employment area and the need to strengthen Heatherbrae's role as a key destination for bulky goods. The proposal is consistent with the draft LSPS.

4.4 Section 9.1 Ministerial Directions

The following Directions apply to the proposal.

1.1 Business and Industrial Zones

The proposal is consistent with this Direction.

1.2 Rural Zones

The proposal is inconsistent with this Direction. The inconsistency is considered minor significance due to the general consistency of the proposal with the Greater Newcastle Metropolitan Plan and because the most productive component of the agricultural land (flood plain) is being retained, aligning with the objective of the Direction. However it is recommended that DPIE (Agriculture) be consulted as part of the consultation prior to this inconsistency being agreed to by the Secretary.

1.3 Mining, Petroleum Production and Extractive Industries

The Direction outlines how the DPIE Resources Regulator must be consulted when a proposal prohibits mining on the land. Consistency with this Direction will be considered following agency consultation. It is noted that the proposal appears to align with the objective of the Direction.

1.5 Rural Lands

The objectives of the Direction are to protect the agricultural productivity of the land and to facilitate the orderly and economic development of rural lands. The proposal will change the land use for land above the flood plain which has existing homes and buildings to a business use resulting in less sensitive receptors to agricultural activities with the removal of permanent residents as is inconsistent with this Direction.

The proposal also outlines that the residue (flood prone land) will continue to be used for agricultural purposes with access to the Pacific Highway and the site does not contain prime agricultural land. As identified consultation with DPIE (Agriculture) is recommended prior to this inconsistency agreed to by the Secretary.

2.6 Remediation of Contaminated Land

This direction came into effect on 17 April 2020, and is discussed further in Section 4.5. The planning is proposal is required to be updated to address this direction and then consistency may be determined.

3.4 Integrating Land Use and Transport

The proposal has included an assessment against *'Improving Transport Choice – Guidelines for Planning and Development'* and *'The Right Place for Business and Services – Planning Policy'*. The proposal is considered consistent with this Direction.

4.3 Flood Prone Land

The proposal is consistent with this Direction. The flood prone component (i.e. land below 1 in 100 event) of the land will retain its rural zone and agricultural values and is not proposed to be rezoned. However as identified, it is recommended the proposal is updated prior to exhibition to include an updated map identifying the flood prone land area.

4.4 Planning for Bushfire Protection

Part of the site is mapped as bushfire prone, hence this Direction applies. In accordance with the Direction, consultation with NSW Rural Fire Service will be required and then consistency may be determined.

5.4 Commercial and Retail Development along the Pacific Highway

The proposal is classified as “out of town”, thus Clause 5 of the Direction applies. The proposal states that it is inconsistent with this Direction as it fronts the Pacific Highway, however, is considered to be of minor significance. Consultation with TfNSW has confirmed consistency with this Direction and its objectives, however it is recommend that Council formally consult with TfNSW.

5.10 Implementation of Regional Plans

The proposal is inconsistent with this Direction as it is inconsistent with Strategy 13 in the Greater Newcastle Metropolitan Plan and this strategy is required to be updated prior to exhibition.

4.5 State environmental planning policies (SEPPs)

The proposal is consistent with all relevant SEPPs.

SEPP Koala Habitat Protection 2019

It is noted that the proposal has referenced the repealed SEPP. While the site contains some Koala habitat trees, it is recognised that the site adjoins the busy Pacific Highway which has extensive bushland on the eastern side. This site is on the western side of the Highway where there is little vegetation remaining. Even so, an updated assessment against the new legislation is necessary prior to agency consultation and as such this is included as a Gateway condition.

It is also noted that the proposal indicates that a preliminary ecological assessment will be undertaken following Gateway and this is supported.

SEPP Primary Production and Rural Development (2019)

The proposal has considered the objectives of the SEPP and is considered to be consistent with these for the same reasons given for Section 9.1 Directions 1.2 and 1.5.

SEPP 55 - Remediation of land

On 17 April 2020, the Minister for Planning and Public Spaces approved the removal clause 6 from SEPP 55 and transfer the requirements to a 9.1 Ministerial direction 2.6. When the proposal was submitted, the proposal was required to consider clause 6, however this clause has since been removed. As such, as a condition of Gateway it is recommended that the proposal is updated to consider direction 2.6 prior to exhibition. Council will be required to consider contamination and remediation prior to finalisation, this may include the preparation of a Phase 1 Contamination Assessment. It is noted that the proposal seeks to prepare a Phase 1 Contamination Assessment following Gateway.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

There are no significant social impacts associated with this proposal, other than the opportunity for additional jobs in the area.

5.2 Environmental

The proposal identifies that the overall site is subject to flooding, however flood prone affected areas of the site are excluded from this proposal. It is also noted that koala feed trees may be present on site and these constraints have been previously discussed in the report. It is noted that a preliminary ecological assessment will be undertaken to address Koala Management Plan requirements.

5.3 Economic

This proposal is consistent with the study that identified the need for additional land for bulky goods retailing has been recognised for Heatherbrae. The proposal will also address the issue of escape expenditure associated with bulky goods retailing and strengthen Heatherbrae as a bulky good destination. The proposal is estimated to generate 300-400 jobs.

5.4 Infrastructure

The proposal will be mapped as an Urban Release Area, hence will make a contribution towards State infrastructure.

To the south east of the site is the proposed Pacific Highway bypass road reservation that will provide a future local road access when the bypass is constructed. Early consultation with Transport for NSW has occurred who advised that they had no objection to the proposal as it does not impact on the proposed bypass, however it is recommended that Council formally consult with Transport for NSW.

The proposal outlines that much of Heatherbrae is unsewered. While the typical water and wastewater demands associated with bulky good retailing are not excessive and can likely be addressed on-site, consultation with Hunter Water Corporation is required to investigate if there are plans for a sewer extension to this location. It is noted that the proposal indicates that a preliminary servicing inquiry will be undertaken following Gateway and this is supported.

6. CONSULTATION

6.1 Community

Council propose a 28 day exhibition period which is considered appropriate given the nature and scale of the proposal.

6.2 Agencies

Consultation is required with the following Government agencies:

- Hunter Water Corporation;
- DPIE (Resources Regulator);
- NSW Rural Fire Service;
- Transport for NSW; and
- DPIE (Agriculture).

7. TIME FRAME

Council suggest an 11-month timeframe. A 12-month timeframe is considered appropriate to enable enough time to undertake the necessary additional work and consultation.

8. LOCAL PLAN-MAKING AUTHORITY

Council resolved to request to be the local plan-making authority for this proposal. This request is considered appropriate as the proposal is generally consistent with both local and regional strategy outcomes.

9. CONCLUSION

It is considered that the proposal should proceed subject to conditions because:

- the proposal is generally consistent with local and regional strategies;
- the site is appropriately located to support the extension of the B5 Business Development land in Heatherbrae;
- the proposal is supported by appropriate evidence demonstrating the need for additional bulky goods retailing land.

10. RECOMMENDATION

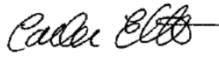
It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.6 Remediation of Contaminated Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans is unresolved and will require justification and/or consultation.

It is recommended that the delegate of the Minister of Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. Council is to update the planning proposal with the following information prior to exhibition on:
 - assessment against the *State Environmental Planning Policy (Koala Habitat Protection) 2019* including details of the significance of the koala feed trees and any proposed conservation measures;
 - consistency with Action 13.1 of the Greater Newcastle Metropolitan Plan 2036;
 - update to address consistency with section 9.1 direction 2.6 - Remediation of Contaminated Land;
 - updated map that illustrates the location of flood prone land in relation to the proposed zoning boundary; and
 - included updated LEP maps following the site survey.
2. The proposed development control plan provisions for the site should be exhibited concurrently with the planning proposal.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authorities:
 - Hunter Water Corporation;
 - DPIE (Resources Regulator);
 - NSW Rural Fire Service;
 - Transport for NSW; and
 - DPIE (Agriculture).
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.

6. Given the nature of the planning proposal, Council should be the local plan-making authority.



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1/05/2020

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