

## Planning Services

IRF18/6767

### Plan finalisation report

Local government area: Port Stephens

#### 1. NAME OF DRAFT LEP

Port Stephens Local Environmental Plan 2013 (Amendment No 25).

#### 2. SITE DESCRIPTION

The planning proposal applies to part of Lot 10 DP1051742 – 8 Waropara Road, Medowie (Figure 1).

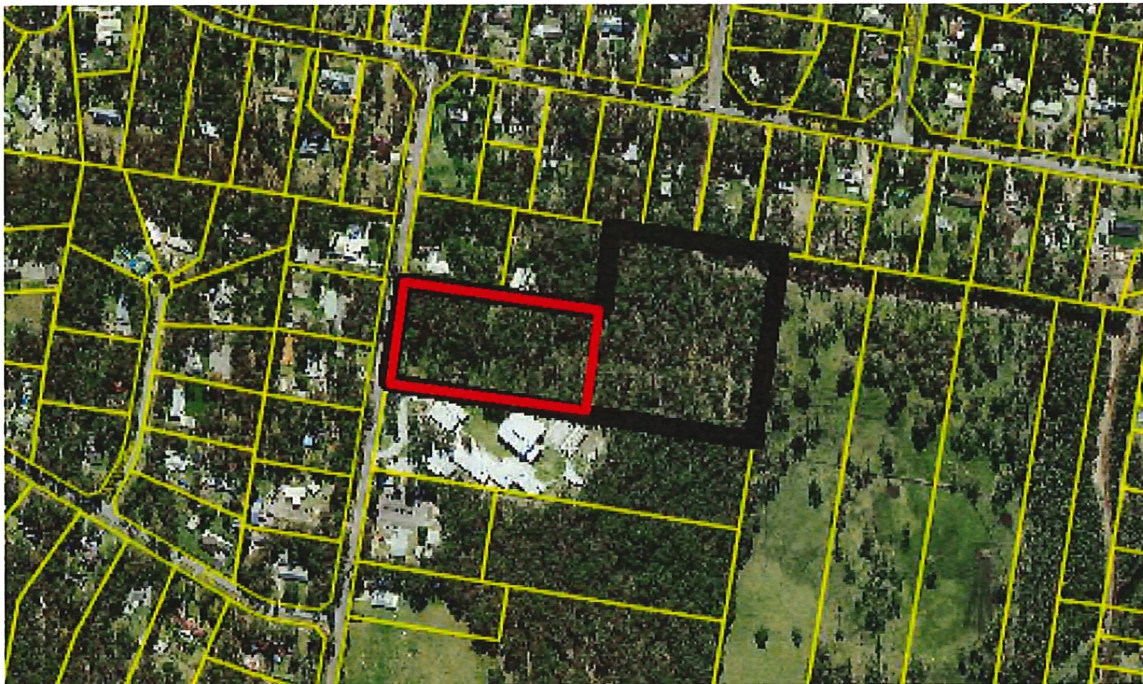


Figure 1: The site (outlined red) forms part of Lot 10 DP1051742 (outlined black).

A location map is provided at **Attachment C**.

#### 3. PURPOSE OF PLAN

The draft LEP seeks to:

- change the minimum lot size from 1ha to 1000m<sup>2</sup> for the site; and
- map the site as an urban release area.

The draft LEP will create up to 15 additional residential allotments (up from two) on the 2.3ha site, which forms part of Lot 10. The remainder of Lot 10 (3.8ha) would retain the existing 1ha minimum lot size. The R5 Large Lot Residential zone that applies to the lot would remain unchanged.

#### 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.

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, neither MP has 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 18 July 2013 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination has been altered several times to extend the completion time frame. The planning proposal is due to be completed before 18 March 2019. The proposal is consistent with the Gateway determination, as altered.

## **6. PUBLIC EXHIBITION**

In accordance with the Gateway determination, community consultation was undertaken by Port Stephens Council from 11 September to 2 October 2014. One submission was received objecting to the proposal. It was concerned that the proposal would change the semi-rural character of the area and that this would undermine amenity. It also raised concerns about drainage, the condition and safety of Waropara Road, and cumulative impacts associated with the nearby school.

Council acknowledges that the character of the immediate area is likely to change. However, it states that this outcome is consistent with the Medowie Planning Strategy 2016 for this site, which identifies it as being suitable for providing increased housing. Council notes that the other matters raised in the submission would be considered further as part of the preparation of a development control plan (DCP) and at the development application stage.

Council has addressed the matters raised. The proposal is consistent with the Medowie Planning Strategy 2016 and provides an increase in dwellings in an urban area consistent with the Greater Newcastle Metropolitan Plan 2036. Concerns relating to road condition, drainage and cumulative impacts associated with the school can be considered further as part of the subsequent planning stages.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council consulted the Office of Environment and Heritage (OEH) and the NSW Rural Fire Service (RFS) in accordance with the Gateway determination. The determination required consultation with the NSW Aboriginal Land Council. However, this did not occur, with Council consulting with the Worimi Local Aboriginal Land Council instead.

Council also undertook consultation with Roads and Maritime Services (RMS), Hunter Water, the Department's Resources and Geosciences division and the federal Department of Defence (Defence).

Defence and OEH objected to the proposal due to concerns about aircraft noise and biodiversity impacts respectively. Other agencies either raised no concerns or considered matters able to be addressed at the development application stage. Individual agency comments are detailed as follows:

### Worimi Local Aboriginal Land Council

The land council supported the proposal. While it noted that the proposal has not undertaken an assessment of impacts on Aboriginal heritage, it considered that this may occur at the development application stage.

Council supports this approach. No further work is required at this stage.

### Office of Environment and Heritage

OEH objected to the proposal because biodiversity impacts would result, and the proposal had not demonstrated that biodiversity would be improved or maintained. It considered the proposal to be inconsistent with Council's Comprehensive Koala Plan of Management (CKPOM) prepared under State Environmental Planning Policy No 44 – Koala Habitat Protection. It advised that the site contains habitat for potentially 15 threatened species (including hollow trees) and an endangered ecological community (1ha), and is identified as a preferred koala habitat link.

OEH recommended Council undertake a quantifiable assessment of impacts to evaluate the adequacy of the offset measure proposed by Council (a habitat management zone). A preliminary biobanking assessment was prepared by Council in response. The assessment found that the proposal did not provide sufficient offsets. Alternatives such as reducing the development footprint, providing off-site offsets, and biobank credits were considered but were not supported by the proponent.

OEH advised that the proposal could proceed provided the new biodiversity legislation was in place (**Attachment D**). It was OEH's view that the new legislation's biodiversity assessment methodology would ensure that adequate offsets would be required at the development application stage.

OEH also raised concerns regarding flooding impacts on the southern portion of the site under a 1% AEP flood event. It requested that the planning proposal consider strategies and controls to manage this flood risk without adversely affecting neighbouring properties.

The assessment of these issues is provided in Section 9 of this report.

### Rural Fire Service

RFS did not raise any concerns with the proposal. It noted that a further bushfire assessment is needed at the development application stage per the requirements of *Planning for Bushfire Protection 2006*.

Council supports this approach. No further work is required at this stage.

### Roads and Maritime Services

RMS did not raise any concerns with the proposal. RMS noted that the proposal is unlikely to have an adverse effect on the state road network. No further work is required at this stage.

### Hunter Water

Hunter Water raised concerns about impacts on drinking water quality as the site is within the Grahamstown Dam drinking water catchment. It noted that a stormwater management plan for any subdivision would need to include water-sensitive urban design measures and that a neutral or beneficial effect (NORBE) outcome would need to be achieved for water quality. It stated that this may occur at the development application stage.

Council states that these matters will be addressed at the development application stage. This approach is supported, noting that Hunter Water is also satisfied with this approach. Council's DCP will require a stormwater management plan to be prepared and for NORBE outcomes to be achieved. No further work is required at this stage.

#### Resources and Geoscience

Resources and Geoscience advised that it had no concerns with the proposal and no further work is required.

#### Federal Department of Defence

Defence objected to the proposal because the site may be periodically overflowed by aircraft, which would expose future residents to high levels of aircraft noise. It notes that the site is outside the ANEF of RAAF Base Williamtown (**Attachment E**).

Council disagrees with Defence. It advises that the proposal should be supported because the site is within the area of Medowie and is consistent with the Medowie Planning Strategy 2016. Council notes that as the site is outside the ANEF, future development on the site would not be subject to the noise provisions of the LEP or DCP.

The assessment of this issue is provided in Section 9 of this report.

### **8. POST-EXHIBITION CHANGES**

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

### **9. ASSESSMENT**

The planning proposal seeks to change the minimum lot size of a 2.3ha portion of a 6.1ha lot from 1ha to 1000m<sup>2</sup> and map this land as an urban release area. The R5 Large Lot Residential zone that applies to the site would not change. The balance of the lot (3.8ha) would retain its R5 zone and 1ha minimum lot size.

Concerns raised in the community submission have been addressed. The proposal is consistent with Council's local strategy and further investigation of concerns such as road impacts and cumulative impacts on the nearby school will be considered at the development application stage.

Agency concerns have been addressed. However, ecology and flooding concerns raised by OEH and aircraft noise concerns raised by Defence require further discussion.

#### Ecology

OEH advised that the site contains threatened species habitat (potentially 15 species) and an endangered ecological community (1ha) and serves as a preferred koala habitat link (Figures 2 and 3, next page). It objected to the proposal because insufficient offsets were provided.



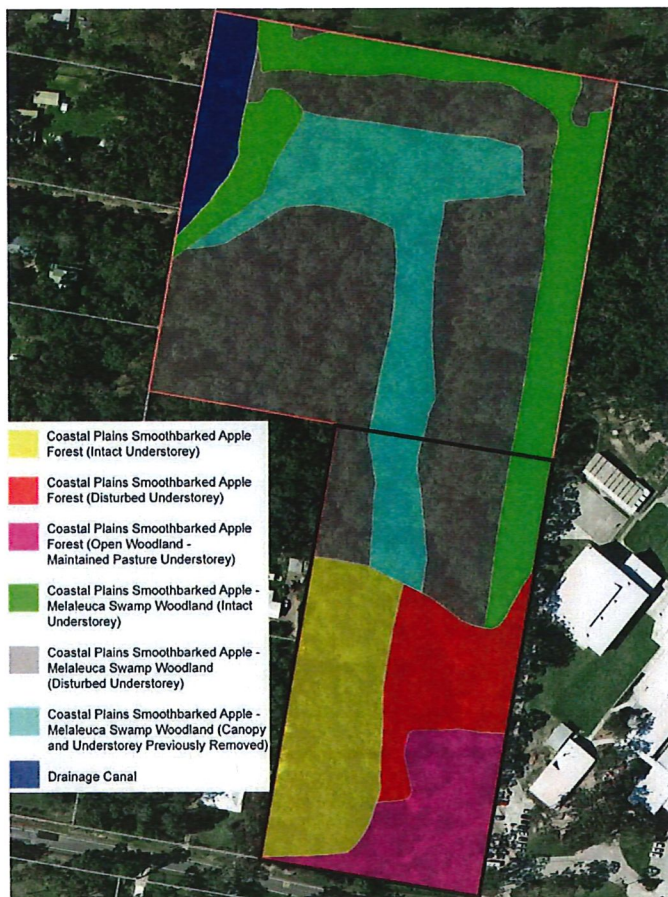


Figure 2: Vegetation communities for the lot are shown. The planning proposal site (part of the lot) is outlined in black. Melaleuca Swamp Woodland is identified as an endangered ecological community (green, aqua and grey) (source: Wildthing Environmental Consultants, 2014).

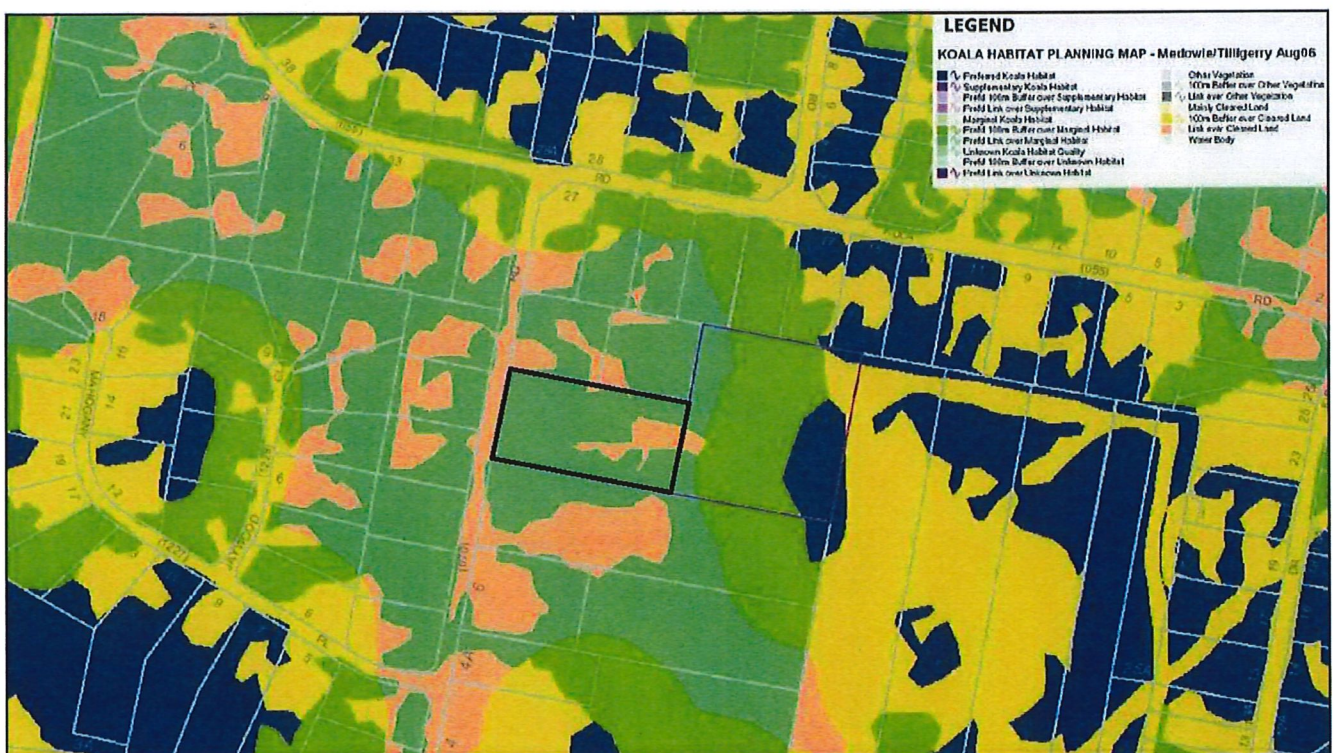


Figure 3: Koala habitat for the planning proposal site is outlined black and the remainder of the lot is outlined purple. Preferred link over marginal habitat is shown in aqua, preferred buffer over marginal habitat in lime green and preferred koala habitat is in dark blue (source: Wildthing Environmental Consultants, 2014).



The proponent's intended approach to offset impacts (habitat management zone via a positive covenant on title over land which is situated to the east of the site on the remainder of the lot) does not provide a sufficient offset (143 credits required, 23 generated).

Attempts were made to facilitate an alternative offset approach such as a reduced development footprint, off-site offsets, or biobank credits, agreement between OEH, Council and the proponent did not occur. With the introduction of the new biodiversity legislation, OEH has agreed that biodiversity offset requirements could be resolved at the development application stage, per the requirements of the *Biodiversity Conservation Act 2016*.

Resolution of ecological impacts as proposed by OEH is supported. The site is relatively small, already zoned for residential purposes and is an infill site that is near a school and the town centre. While the site contains endangered ecological communities (EEC) and provides a koala habitat link, it adjoins urban development to the north, west and south. Its value in terms of biodiversity connectivity is therefore limited and so development of the site for an additional 15 dwellings can be supported.

Its biodiversity value is not limited as evidenced by the offsets study. The offset requirements of the *Biodiversity Conservation Act 2016* will ensure that should the site be developed, the loss of biodiversity value is offset. This may occur at the development application stage once a final development footprint is determined.

#### Flooding

OEH raised concern that the southern portion of the site is flood affected in a 1% AEP flood event (Figure 4).





The flood report prepared by the proponent identifies that several new dwellings would be affected and that impacts would be mitigated by filling and/or elevated subfloor levels. The study states that filling would not result in any localised flooding impacts. It notes that Council's flood study and floodplain risk management plan (FRMP 2016) suggest that filling in this area may occur because it would not result in adverse impacts.

Council considers this to be a site drainage issue that can be resolved through the development application process. The Department agrees with this approach, noting the conclusions of the study and that Council's FRMP considers the potential for filling in this area. Further flooding assessment will need to occur once detailed development design has been completed. This will allow management measures to be identified and may be resolved as part of the development application stage.

#### Aircraft noise

While Defence acknowledged that the site is outside the ANEF contours, it objected to the proposal because the site may be overflowed by aircraft periodically and future residents would be exposed to high levels of noise when this occurs. The site's proximity to the ANEF noise contours associated with RAAF Base Williamtown and the Salt Ash Air Weapons Range is shown in Figure 5.

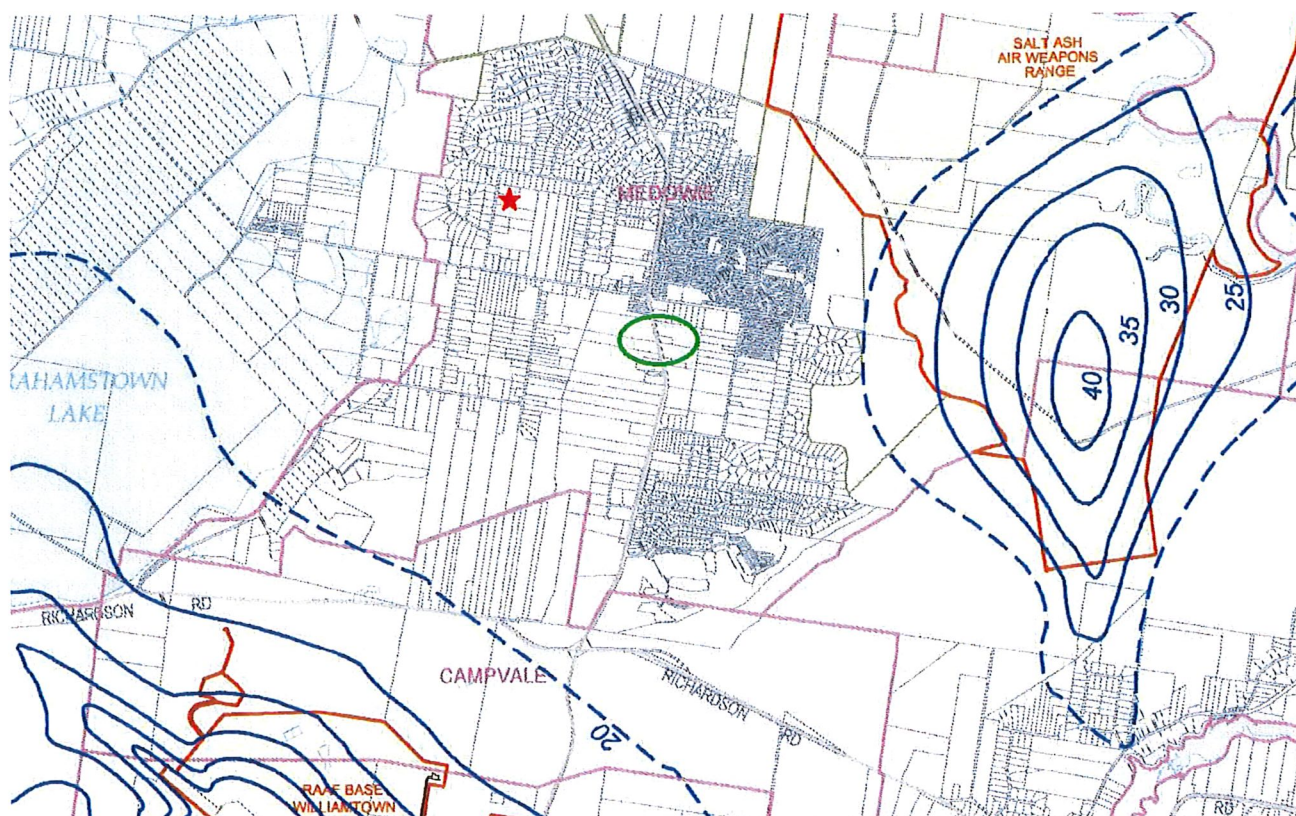


Figure 5: ANEF contours for RAAF Base Williamtown and Salt Ash Air Weapons Range. The site (red star) and the Port Stephens LEP Amendment 24 site (green) are marked (source: Defence, 2011).

Where planning proposals affect land subject to aircraft noise, section 9.1 Ministerial Direction 3.5 Development Near Licensed Aerodromes sets out the circumstances whereby aircraft noise is acceptable. Where an increase in residential density is proposed, the land cannot be rezoned if it is affected by noise levels greater than ANEF 25. If noise levels are between ANEF 20 and 25, then provisions need to be put in place to mitigate noise. For land outside ANEF 20, no noise-related requirements are specified.

The site sits outside the ANEF 20 contours for both aircraft noise areas. As a result, aircraft noise impacts do not preclude this site from being rezoned as proposed or require mitigation measures to be put in place. The site is also within the township of Medowie, which is identified in regional and local strategies as an area suitable for additional residential growth. The objection raised by Defence is therefore not supported.

While mitigation measures would not apply to dwellings on the site, Council's aircraft noise policy would require planning certificates (s10.7(5)) to contain advice about the potential for the land to experience elevated noise levels. This approach is supported and is an adequate response to the concerns raised. Defence supported this approach for Port Stephens LEP Amendment 24, which was notified in March 2018 and provided capacity for up to 270 dwellings (Figure 5, previous page).

### Section 9.1 Directions

The proposal is inconsistent with several section 9.1 Directions and the Secretary's delegate's agreement to the inconsistencies is required.

#### *Direction 2.1 Environment Protection Zones*

This Direction applies and requires the proposal to facilitate the protection and conservation of environmentally sensitive areas. The proposal would result in the loss of preferred koala link over marginal habitat, EEC and potential impacts on 12 threatened flora species and three threatened fauna species. The proposal is therefore inconsistent with this Direction.

OEH is satisfied that the biodiversity impacts can be resolved through the development application process and this position is supported, as previously discussed. Given this, the proposal's inconsistency with the Direction is considered of minor significance and it is recommended that the Secretary's delegate determine the inconsistency is justified.

#### *Direction 2.3 Heritage Conservation*

This Direction applies and requires the proposal to contain provisions that facilitate the protection of Aboriginal items, places, objects, areas, etc. As the proposal does not contain such provisions and no Aboriginal heritage assessment has been undertaken to determine potential impacts, the proposal is considered inconsistent with this Direction.

Council has consulted the Worimi Local Aboriginal Land Council, which has not raised concerns with the proposal progressing. Notwithstanding, Worimi notes the need for further assessment to be undertaken at the development application stage in consultation with the land council. Given this and noting the heritage provisions of the LEP (cl 5.10) and the *National Parks and Wildlife Act 1974*, the inconsistency is considered of minor significance and it is recommended that the Secretary's delegate determine the inconsistency is justified.

#### *Direction 4.3 Flood Prone Land*

This Direction requires planning proposals to not permit a significant increase in the development of land in a flood planning area. As the site is flood affected and the proposal would increase the yield of the site from two dwellings to 15 dwellings, the proposal is inconsistent with this Direction.

Council's flood hazard mapping identifies the southern portion of the site as low-hazard flood fringe. The flood report prepared by the proponent identifies that several new dwellings would be affected and that impacts would be mitigated by filling and/or elevated subfloor levels. The study asserts that filling would not result in any localised flooding impacts and notes that Council's flood study and floodplain risk management



plan (FRMP 2016) suggest that filling in this area may occur because it would not result in adverse impacts. Council is satisfied that flooding impacts can be adequately addressed and resolved at the development application stage.

Given the above and noting that Council's FRMP does not raise issue with filling in this area, it is considered that flooding issues can be addressed. The proposal's inconsistency with the Direction is considered of minor significance and it is recommended that the Secretary's delegate determine the inconsistency is justified.

#### *Direction 4.4 Planning for Bushfire Protection*

This Direction applies because the proposal affects land that is bushfire prone. Council has consulted with RFS as required by the Direction and no issues were raised. However, the proposal is inconsistent with the Direction because it does not contain provisions regarding asset protection zones (APZs) and access roads as required by the Direction.

The additional matters (APZs, access) can be considered as part of the development application per the requirements of *Planning for Bushfire Protection 2006*. The site adjoins Waropara Road, is in a developed area and is of sufficient size such that bushfire impacts can be resolved through appropriate subdivision design. The inconsistency is therefore considered of minor significance and it is recommended that the Secretary's delegate determine the inconsistency is justified.

#### State environmental planning policies (SEPPs)

##### *State Environmental Planning Policy No 44 – Koala Habitat Protection*

This SEPP applies to the Port Stephens local government area (LGA). Port Stephens has a Comprehensive Koala Plan of Management (CKPOM) which applies to the LGA to implement SEPP 44, and the site is mapped as containing areas of preferred link over marginal habitat.

The CKPOM sets out performance criteria for rezonings which relate to land containing koala habitat or links. Council concludes that of the four criteria, the proposal does not satisfy criterion b) 'allow for only low impact development within areas of Supplementary Koala Habitat and Habitat Linking Areas' and criterion d) 'not result in development which would sever koala movement across the site'.

This conclusion is supported and, as such, the proposal is inconsistent with SEPP 44. The inconsistency is considered minor because the proposal is consistent with Council's local strategy, the site has reduced connectivity value due to adjoining development, and OEH has agreed that the proposal may proceed to finalisation.

#### Greater Newcastle Metropolitan Plan 2036

Medowie is within the Greater Newcastle Metropolitan Plan area. The proposal is consistent with Strategy 16 in the plan – *Prioritise the delivery of infill housing opportunities within existing urban areas* because it enables infill housing in a residential-zoned site in Medowie.

#### Medowie Planning Strategy 2016

The site is identified in the strategy as a residential precinct (Site 'I' in Figure 6) and is consistent with the strategy's five principles, being:

- development is supported by infrastructure;
- the town centre is the focus for commercial and community activity;
- rural-residential character is balanced with urban development;

- development has a neutral or beneficial effect on water quality and no increases in flooding impacts; and
- habitat and key corridors are improved or maintained



Figure 6: Medowie Planning Strategy map excerpt.

## 10. MAPPING

The draft LEP will be implemented through amendments to the minimum lot size and urban release area maps. The maps have been checked by the regional team and the ePlanning team.

## 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument. Council confirmed on 9 April 2018 that it was happy with the draft and the plan should be made (**Attachment G**).

## 12. PARLIAMENTARY COUNSEL OPINION

On 10 April 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. An updated PC opinion was issued on 30 October 2018 consistent with the April opinion, hence no further consultation with Council was necessary. The updated 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 *Environmental Planning and Assessment Act 1979* because:

- the proposal provides additional dwellings consistent with Council's local strategy and Strategy 16 of the Greater Newcastle Metropolitan Plan 2036;
- Council has addressed the concerns raised in community submissions, with further work to occur as part of a future development application to examine traffic and road impacts; and
- agency concerns have been adequately addressed for the rezoning stage, including flooding, heritage, ecology, water quality and bushfire impacts. More



detailed assessment will be required as part of a future development application, once development plans are finalised.



9/1/2019

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11/1/2019

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