

Planning Services

Plan Finalisation Report

Local Government Area: Port Stephens

File Number: OBJ10/21386

1. NAME OF DRAFT LEP

Port Stephens Local Environmental Plan 2013 Amendment No. 24 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land at 688, 702, 714, 717, 722, 730, 733 Medowie Road, Medowie (the site).

3. PURPOSE OF PLAN

The draft LEP seeks to:

- change the land use zoning of the site from RU2 Rural Landscape zone to R2 Low Density Residential zone and E2 Environmental Conservation;
- change the minimum lot size standard from 20 ha to 500 m² for the proposed R2 portion;
- change the height of buildings standard from no standard applying to a maximum building height of 9 m applying for the proposed R2 zoned land;
- identify the proposed R2 zoned land as an urban release area; and
- introduce a new local clause that applies to the site which prevents the consent authority from issuing consent for the development of the land unless it is satisfied that the poultry farm that is situated on part of the site is to be decommissioned.

The proposal would result in approximately 27 ha of land for residential development which may facilitate the up to 270 dwelling houses. It will also result in approximately 14 ha of land being conserved for environmental purposes of which 10 ha would be subject to a biodiversity improvement strategy.

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.

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

4. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 23 December 2010 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on several instances to extend the time to complete the planning proposal.

In addition, it was altered on 16 June 2015 to accept the introduction of a local clause to manage odour impacts associated with an existing poultry farm located on the site (**Attachment D1**). It was also altered on 31 January 2018 to note that the proposal would amend the Port Stephens LEP 2013 (as opposed to the Port Stephens LEP 2000 which was repealed in 2014) (**Attachment D2**).

The planning proposal is now due for finalisation by 30 June 2018.

5. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council between 6 June 2013 and 5 July 2013. Additional community consultation was also undertaken between 22 May 2014 and 26 June 2014.

Council advises that it received four submissions from community members. The submissions raised concerns regarding impacts on koalas, the potential for land use conflict with the adjoining macadamia nut farm, the adequacy of the existing transport network and community infrastructure, and visual impacts for adjoining properties resulting from vegetation loss.

Council has changed the planning proposal to respond to concerns about biodiversity impacts (including koala impacts). Land is now to be rezoned E2 Environmental Conservation and a Vegetation Management Plan (VMP) is to apply (refer to Figures 1-3). The VMP requires tree planting (including preferred koala habitat trees) and weed management to offset adverse impacts resulting from the vegetation loss associated with the proposal.

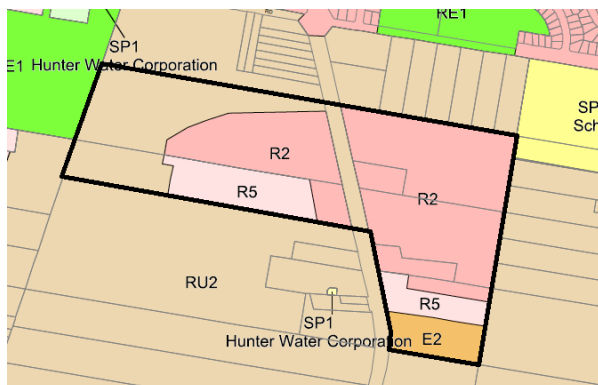


Figure 1: Proposed zoning (initial)



Figure 2: Proposed final zoning in LEP amendment (in response to submissions)



Figure 3: Areas affected by VMP (purple/ green)

No changes have been made to the proposal regarding the other concerns raised. Council has reviewed the transport and community infrastructure needs for Medowie as part of its revised Medowie Strategy and Town Centre Masterplan (2016). This occurred after the planning proposal's consultation period and identifies a range of upgrades and improvements that are to occur. It includes an action plan which sets out how and when the items are to be delivered (e.g. s.94 plan implementation).

Council advises that impacts on the macadamia farm are to be mitigated by applying the E2 zone to the land adjoining the farm, and further consideration is to be given to the issue through the development of a site-specific development control plan (DCP) for the site and future DA assessment. Council recognises that applying notification on the s.149 certificate (now s 10.7 certificate) of new residential lots may assist in advising potential residents of the possibility of impacts associated with the farm.

Council states that visual impacts are to be considered further through the development of the site-specific DCP and DA stage.

Council has adequately responded to the issues raised and there is no need for further investigation to be undertaken at this time. Notwithstanding, more detailed assessment of these matters will be undertaken at the DA stage.

6. ADVICE FROM PUBLIC AUTHORITIES

In recognition of the previous agency consultation undertaken under the former plan-making provisions, the Gateway determination did not place specific agency consultation requirements on the planning proposal. Instead it recommended re-consulting with OEH, RMS and OW due to changes made to the proposal at the time.

Notwithstanding, Council has consulted with the Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS) and the Office of Water (OW), Hunter Water Corporation, the Commonwealth Department of Defence (Defence), the Department of Primary Industries (Agriculture), Resources and Energy, and the Rural Fire Service over the course of this proposal. The Worimi Aboriginal Land Council was also consulted and Council advises that no response was received.

OEH objected to the proposal due to potential biodiversity impacts and the objection has since been resolved. The other agencies did not object and raised matters for consideration. Agency responses are discussed in more detail as follows:

Office of Environment and Heritage

OEH objected to the proposal because Council had not demonstrated how biodiversity impacts would be adequately offset, noting potential impacts on koala habitat (supplementary habitat) and EEC loss due to the future development of the site. It suggested several options to reduce and offset impacts.

The objection was resolved by the proponent developing an offset package which was informed by OEH's comments and a quantitative assessment of impacts using the biobanking assessment methodology. As a result, part of the site is now to be zoned E2 Environmental Conservation and a VMP is to be applied to 10 ha of the site. The E2 zoned land sits within a local environmental corridor, and the VMP has been registered on title and needs to be implemented before vegetation removal may occur on parts of the site. The VMP involves improvements such as the planting of preferred koala habitat trees and weed removal.

Council has adequately addressed the concerns raised by OEH.

Roads and Maritime Services

Council advises that RMS raised general matters regarding the transport network in Medowie and did not raise specific concerns about the proposal. RMS identified the need for Council to investigate potential upgrades to various roads/ intersections and for funding mechanisms to be developed (eg s.94 plan), to ensure that future growth contributes to network upgrades.

Council has responded by undertaking the Medowie Traffic and Transport Strategy (2012) which has informed the land use planning and infrastructure upgrades identified in the Medowie Planning Strategy (2016). Council's section 94 plan addresses infrastructure upgrades that are to be delivered as Medowie continues to grow.

The matters raised by RMS have been adequately addressed by Council. As Medowie Road is a classified road, RMS will be consulted at the DA stage to ensure that proposed access arrangements for the site are supported.

Office of Water

OW raised matters regarding controlled activities associated with the water course adjacent to the site, water cycle management and licensing in relation to detention basins and the existing dam.

Council has responded to these comments by noting that these issues would be investigated further as part of a future DA and site-specific development control plan. This approach is supported.

Hunter Water Corporation

HWC advised that there was sufficient capacity in the water supply system and waste water treatment plan to accommodate the future development of the site. It noted however that a wastewater servicing strategy would need to be prepared for the development to ensure sufficient servicing.

HWC also provided comments regarding water quality given the site sits within the Grahamstown Dam drinking water catchment. It notes that the proposal is of sufficient scale to warrant management measures to ensure water quality. HWC states that a neutral or beneficial effect (NORBE) outcome would need to be demonstrated and that the development would need to put in place appropriate management measures.

Council states that the servicing strategy and stormwater management will be addressed further as part of a future DA and site-specific development control plan. The Department does not raise issue with this approach, noting that HWC has not requested further analysis at the rezoning stage and that Council's DCP will require NORBE outcomes to be achieved at the DA stage.

Commonwealth Department of Defence

Defence does not object to the proposal. While the site sits outside the ANEF 20 contour for the Williamtown RAAF Airbase and Salt Ash Air Weapons Range, Defence notes that the site may be exposed to aircraft air noise. It has requested that Council advise future residents that this may occur.

Council advises that the notification will be placed on s.149(5) certificates (now s.10.7(5)). This approach is consistent with its Aircraft Noise Policy (2011) and is supported. Council has adequately responded to the matters raised by Defence.

Department of Primary Industries (Agriculture)

DPI advised that the loss of this prime agriculture land was of minor significance because the land was not of strategic value, having limited ongoing agricultural production potential. However, it noted that there was potential for land use conflict (odour) due the existing poultry farm operations occurring on the western part of the site.

Council has responded to this issue by preparing a local clause which would require arrangements to be in place for the poultry farm to be decommissioned before consent could be granted for development on the land. This approach is supported.

Resources and Energy

Resources and Energy advised that it had no concerns with the proposal. No further action is required.

Rural Fire Service (RFS)

Council advises that RFS does not object to the proposal and that further assessment of potential bushfire impacts would occur at the DA stage. Council advises that this will occur per the relevant requirements at that time. No further action is required.

7. POST EXHIBITION CHANGES

Since consultation community consultation was undertaken, Council has made changes to the proposal to align with the revised Medowie Strategy (2016) and to respond to the OEH objection regarding biodiversity impacts. The changes made include the following (refer to Figures 4 and 5 for a comparison of land use zone maps):

- RU2 Rural Landscape zoned land now to be zoned R2 Low Density Residential and E2 Environmental Conservation;
- R5 Large Lot Residential zoned land now to be zoned R2 Low Density Residential and E2 Environmental Conservation;
- Minimum lot size has changed from 20 ha (RU2), 500 sqm (R2) and 1,000 sqm (R5) to 500 sqm (R2);
- Height of buildings (9 m) and the urban release area map have been changed to apply to the expanded area of R2 zoned land; and
- A Vegetation Management Plan (VMP) implemented by a restriction on title is now to apply to the expanded area of E2 zoned land.

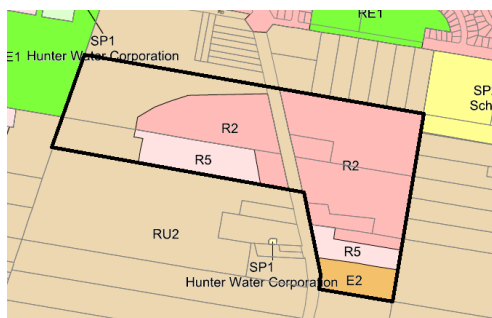


Figure 4: Exhibited Planning Proposal (2014)



Figure 5: Final Planning Proposal (2017)

These changes and the need to re-exhibit the revised planning proposal were considered as part of the Gateway alteration issued on 31 January 2018. It was concluded that the changes could be supported and that re-exhibition was not necessary. It was considered that the changes to the development footprint and associated impacts are minor, and that the biodiversity related changes responded to an OEH submission and occurred in consultation with the affected landowners.

8. ASSESSMENT

Finalisation of the planning proposal is supported. Council has satisfied the conditions of the Gateway determination and has adequately responded to the issues raised in submissions. Several matters require further investigation as part of a future DA or the preparation of a development control plan (e.g. stormwater management, visual impacts, access arrangements). Notwithstanding, the key issues of potential land use conflict due to odour and biodiversity impacts have been sufficiently progressed to enable the proposal to be finalised.

While the Department is satisfied that the planning proposal has demonstrated that a suitable biodiversity outcome would be achieved, additional measures may be required at the DA stage following the recent biodiversity reforms. This will be a matter for the consent authority to consider, noting that certain measures (such as preparing a VMP, weed management etc) can be considered as credits which reduce the amount of offset required under the new legislation. It would also depend on the timing of the DA. A DA lodged prior to late November 2018 would be able to utilise the former biodiversity provisions due to transitional arrangements being in place.

Section 9.1 Directions

The Gateway determination identified the need for Council to seek the Secretary's agreement to the planning proposal's inconsistency with Direction 1.2 Rural Zones and 1.5 Rural Land before the plan may be made. This is yet to occur. In addition, the Secretary's agreement to the planning proposal's inconsistency with Directions 4.4 Planning for Bushfire Protection and 6.3 Site Specific Provisions is required also. The planning proposal is consistent with the other relevant directions.

Direction 1.2 Rural Zones: the direction applies because the proposal affects rural zoned land. It is inconsistent because it would rezone rural zoned land (RU2) to a residential zone. Council has consulted with DPI (Agriculture) who has confirmed that the loss of agricultural land is of minor significance. Given the DPI advice, and noting that the site is infill and well located for urban development, the Secretary should agree that the proposal's inconsistency is of minor significance.

Direction 1.5 Rural Lands: the direction applies because the proposal would affect land within an existing rural zone (RU2). It is inconsistent with the direction because the loss of prime agricultural land is not consistent with the rural planning principles. Council has consulted with DPI (Agriculture) who has confirmed that does not have strategic value in terms of continued agricultural production potential. Given the DPI advice, and noting that the site is infill and well located for urban development, the Secretary should agree that the proposal's inconsistency is of minor significance.

Direction 4.4 Planning for Bushfire Protection: the direction applies because the proposal affects land that is bushfire prone. Council has consulted with the RFS as required by the direction and no issues were raised. However, the proposal is inconsistent with the direction because the proposal has not considered *Planning for Bushfire Protection 2006* (it considered the 2001 version which was current when the proposal commenced) and does not contain provisions regarding Asset Protection Zones and access roads as required by the direction.

This inconsistency is considered minor because the RFS does not object to the proposal, and the additional matters (APZs, access) can be considered as part of the DA per the requirements of *Planning for Bushfire Protection 2006*. The site adjoins Medowie Road and is of sufficient size such that bushfire impacts can be resolved through appropriate subdivision design. The Secretary should agree that the inconsistency is of minor significance.

Direction 6.3 Site Specific Provisions: the direction applies because a new site-specific local clause would be added to the LEP. As the clause would impose requirements on the development of the site which do not otherwise apply in the LEP, the proposal is inconsistent with the direction.

In this instance, the clause requires arrangements to be in place for the decommissioning of a poultry farm before consent may be issued for development. The poultry farm is located on the western side of the site and DPI (Agriculture) raised concerns that odour impacts would result should parts of the broader site be developed while the farm is operating.

The clause is supported because it provides a statutory means for ensuring that land use conflict associated with the farm is avoided, while enabling the rezoning to progress. It responds directly to DPI (Agriculture) concerns and is supported by the landowner. Further, it is appropriate in this instance because the farm is still operational, is located on the development site and may cause conflict should development occur before it is decommissioned. The clause may be removed from the LEP once the farm is decommissioned. Given this, the Secretary should agree that the inconsistency is of minor significance.

State Environmental Planning Policies

The Gateway determination did not identify inconsistency with any particular SEPPs. The final planning proposal is considered consistent with the relevant SEPPs.

9. MAPPING

The draft LEP will be implemented through mapping amendments to the Land Use Zoning, Minimum Lot Size, Height of Building and Urban Release Area Maps. The maps have been checked by both the regional team and the ePlanning team.

10. CONSULTATION WITH COUNCIL

Council has been consulted on the terms of the draft LEP (**Attachment E**). Council confirmed on 27 February 2018 that it was happy with the draft and that the Plan should be made (**Attachment E**).

11. PARLIAMENTARY COUNSEL OPINION

On 1 March 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at (**Attachment PC**).

12. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP because:

- it will provide for up to an additional 270 dwelling houses on an infill site located near to the Medowie Town Centre;
- biodiversity impacts are being offset by rezoning 14 ha of land to E2 Environmental Conservation of which 10 ha will be subject to improvements which support the local koala population;
- potential land use conflicts (odour) associated with an existing poultry farm are to be managed through a local clause which requires the farm to be decommissioned;
- Council has adequately addressed agency and community concerns, notwithstanding the need for more detailed assessment to occur on some issues at the DA and DCP preparation stage; and
- there are no outstanding agency objections.



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