



IRF23/3365

# Gateway determination report – PP-2023-2705

Administrative Amendments 2023 – multiple sites

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1 Planning proposal</b>	<b>1</b>
1.1 Overview	1
1.2 Objectives of planning proposal	1
1.3 Explanation of provisions	2
1.4 Site description and surrounding area	4
1.5 Mapping	7
<b>2 Need for the planning proposal</b>	<b>7</b>
<b>3 Strategic assessment</b>	<b>7</b>
3.1 Hunter Regional Plan 2041	7
3.2 Greater Newcastle Metropolitan Plan 2036	8
3.3 Local	9
3.4 Section 9.1 Ministerial Directions	9
3.5 State environmental planning policies (SEPPs)	11
<b>4 Site-specific assessment</b>	<b>11</b>
4.1 Environmental	11
4.2 Social and economic	11
4.3 Infrastructure	12
<b>5 Consultation</b>	<b>12</b>
5.1 Community	12
5.2 Agencies	12
<b>6 Timeframe</b>	<b>12</b>
<b>7 Local plan-making authority</b>	<b>12</b>
<b>8 Recommendation</b>	<b>12</b>

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Port Stephens</b>
<b>PPA</b>	Port Stephens Council
<b>NAME</b>	Administrative Amendment 2023
<b>NUMBER</b>	PP-2023-2705
<b>LEP TO BE AMENDED</b>	Port Stephens Local Environmental Plan 2013
<b>ADDRESS</b>	Multiple sites within Port Stephens LGA
<b>DESCRIPTION</b>	Optional Clause 5.22 Special Flood Considerations; amend Schedule 5 Environmental Heritage; Rezone land to C1 National Parks and Nature Reserves; Amend the Minimum Lot Size map.
<b>RECEIVED</b>	1/12/2023
<b>FILE NO.</b>	IRF23/3365
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose, and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal seeks to complete four minor administrative amendments to the *Port Stephens Local Environmental Plan 2013*. These include:

- Adopt optional Clause 5.22 Special Flood Considerations.
- Amend Schedule 5 Environmental Heritage to correct the property address and mapping for item 179 Raymond Terrace Courthouse.
- Rezone land at Medowie State Conservation Area and Columbey National Park to C1 National Parks and Nature Reserves.
- Amend the Minimum Lot Size map to align with the Land Zoning Map at Kinross, Estate Heatherbrae (Lot 1401 DP 1272419).

Completion of these amendments will allow the *Port Stephens LEP 2013* to remain accurate and current.

## 1.3 Explanation of provisions

### Amendment 1 – Clause 5.22

The purpose of the amendment is to adopt the optional special flood considerations clause. This will allow the appropriate consideration of flood risks for sensitive and hazardous development, and development on land that Council considers requires special consideration. This is particularly relevant to the Port Stephens area as a high level of the residential and employment lands are flood affected. The proposed amendment will allow Council to manage risk with future development, avoid accumulative impacts, protect the capacity of emergency responses, and avoid adverse effects during flood events. Council has included all of the optional land uses to which the clause may apply.

### Amendment 2 – Schedule 5 Environmental Heritage

The street address and property description for the courthouse have changed following a two into two lot subdivision of the site which changed the lot boundaries. The address of item 179 in the LEP is 59 William Street, Raymond Terrace Lot 10 Section 11 DP 758871. The proposed address is 55 William Street, Raymond Terrace Lot 10 DP 1263525. The details in Schedule 5 and the heritage map will be updated to show the correct information.

The proposed change to the heritage map is shown in Figure 1 as outlined in bold black. The heritage conservation area (red) is not proposed to change.



Figure 1: Existing and proposed Heritage Map

### Amendment 3 – C1 National Parks and Nature Reserves

Amend Land Zoning Map to rezone 5 sites to C1 National Parks and Nature Reserves under the *National Parks and Wildlife Act 1974* (Figures 2-3). These sites have been reserved and rezoning them to reflect their new conservation status follows requests from the National Parks and Wildlife Service (NPWS).

Council should also remove the minimum lot size standard so that no standard applies. This will make the sites consistent with other C1 zoned land within the LGA.

Address	Current zone	Reservation status
Lot 2 DP 1224780 139 Boundary Road, Medowie	C2 Environmental Conservation	Medowie State Conservation Area
Lot 1 DP 1192418 17 Notts Lane, Glen Oak	RU2 Rural Landscape	Columbey National Park

Lot 119 DP 752445 716A Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 1 DP 1168926 716B Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 2 DP 1168926 716C Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park



Figure 2: Existing and proposed Land Zoning Map – Medowie State Conservation

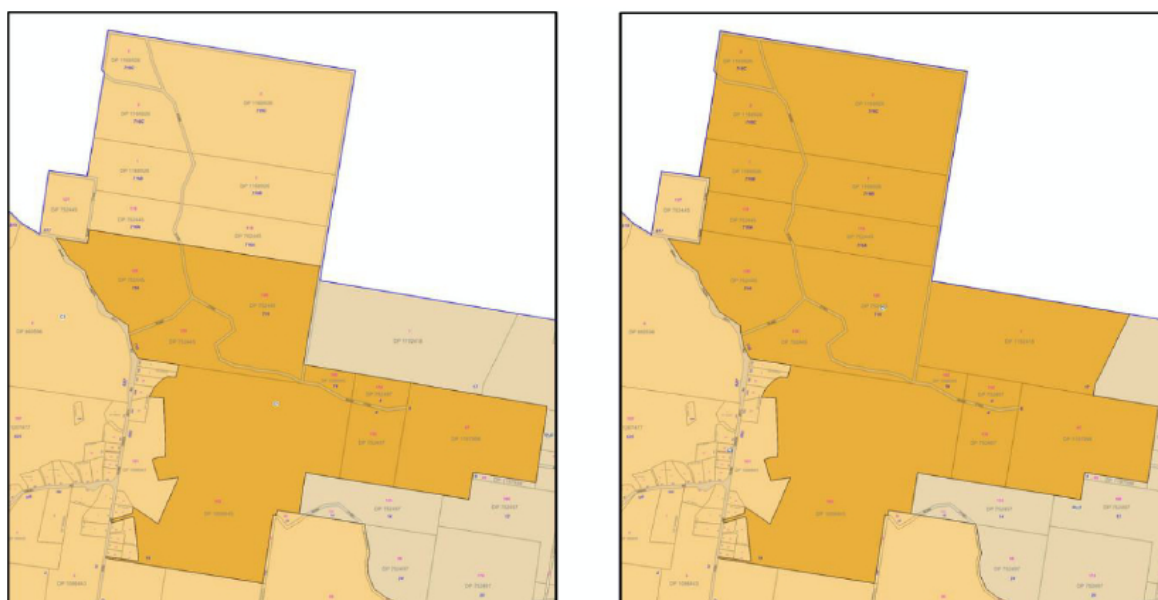


Figure 3: Existing and proposed Land Zoning Map – Columbey National Park

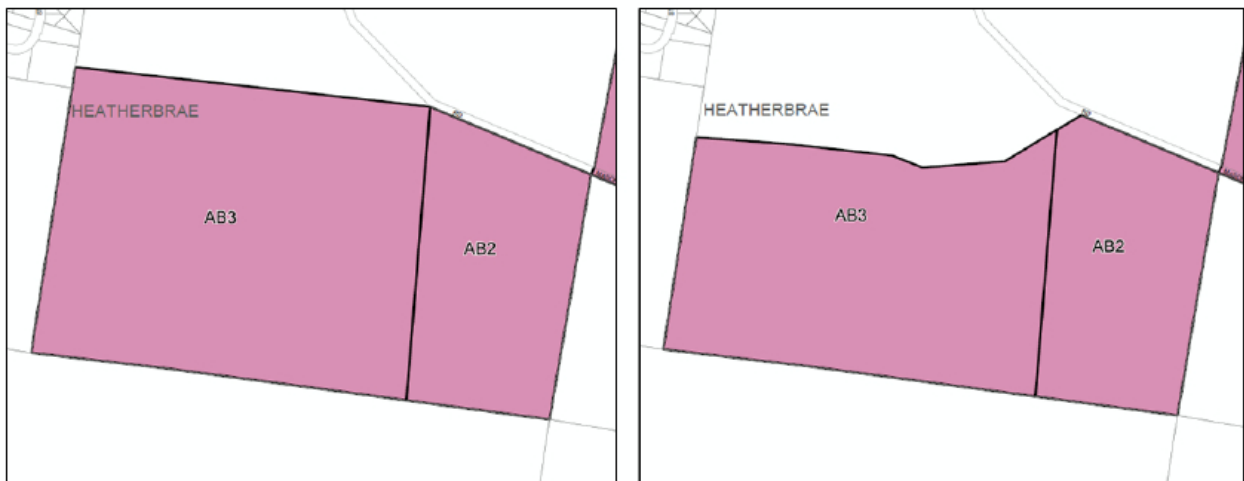
#### Amendment 4 – Masonite Road, Heatherbrae

The Lot Size Map for part of 343 Masonite Road, Heatherbrae, Lot 1401 DP 1272419 incorrectly applies a minimum lot size of 20 hectares to land zoned SP2 Classified Road and E4 General Industrial (Figure 4).



**Figure 4: Current Lot Size Map and current Land Zoning Map at 343 Masonite Road, Heatherbrae.**

The change corrects an error introduced in the map finalisation process for LEP Amendment 30 (finalised Dec 2019). Council would like to realign the Lot Size Map with the current Land Zoning Map to correct this error and enable subdivision of the industrial zoned land (Figure 5).



**Figure 5: Current Lot Size Map and proposed Lot Size Map for 343 Masonite Road, Heatherbrae.**

## 1.4 Site description and surrounding area

### **Amendment 1 – Clause 5.22**

Does not involve a site.

### **Amendment 2 – Schedule 5 Environmental Heritage**

Heritage item 179, the Courthouse is located in an E2 Commercial centre zone in the city centre. The Courthouse is located on a larger lot alongside the Raymond Terrace Police Station (to the west of the courthouse building). The Port Stephens Council building is located behind it (north). Shops and businesses are opposite the site to the south with housing and a primary school to the east. Refer to Figure 6. The street frontage has a typical footpath, homestead and lawned section alongside advertisement signs and a small, wired fence. The lot size is approximately 0.29 hectares.





Figure 6: Raymond Terrace Courthouse and surrounds

### Amendment 3 – C1 National Parks and Nature Reserves

#### Medowie State Conservation Area

Lot 2 DP 1224780 139 Boundary Road, Medowie is located on the northern fringe of Medowie. It is adjoined by the Medowie State Conservation Area to the north, east and a small fraction to the west. It adjoins a large section of zoned and developed R2 land to the south. It is located on the outskirts of Medowie approximately 3.3km from the shopping centre and approximately 3.6km from two schools – Medowie Public School and Medowie Christian School. The lot is approximately 69 hectares.



Figure 7: Land to be rezoned C1 at Medowie State Conservation Area



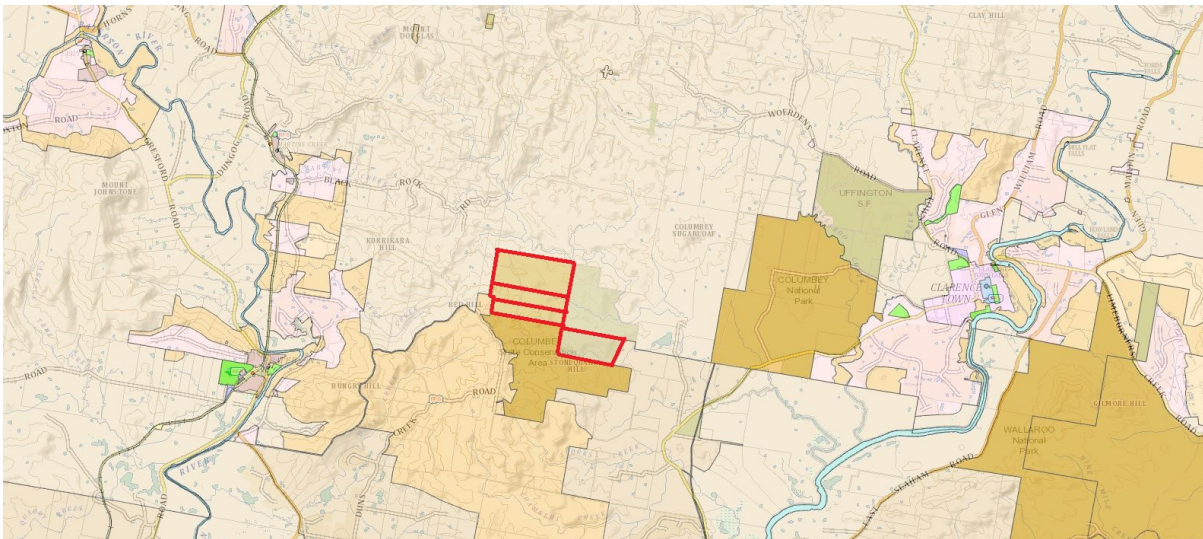
### Columbey National Park

Lot 1 DP 1192418 17 Notts Lane, Glen Oak is located in the Columbey National Park. It is currently zoned RU2 Rural Landscape. It has C1 zoned land to the south and west with RU2 zoned land to the east and RU1 zoned land to the north. It is approximately 70 hectares.

Lot 119 DP 752445 716A Duns Creek Road, Lot 1 DP 1168926 716B Duns Creek Road, and Lot 2 DP 1168926 716C Duns Creek Road are zoned C3 Environmental Management. This is with RU1 land to the east, north and west, and C1 zoned land to the south.

Lot 119 DP 752445 716A Duns Creek Road is approximately 40 hectares, Lot 1 DP 1168926 716B Duns Creek Road is approximately 55 hectares, and Lot 2 DP 1168926 716C Duns Creek Road is approximately 110 hectares.

All lots are heavily vegetated and have various elevation points. The lots are located in between Paterson approximately 14km to the west and Clarence Town approximately 11km to the east.



**Figure 8: Location of Columbey National Park sites to be rezoned C1**

### Amendment 4 – Masonite Road, Heatherbrae

The amendment relates to part of Lot 1 DP1286504, 343 Masonite Road, Heatherbrae. It has a combination of C2 Environmental Conservation, SP2 Classified Road and E4 General Industrial zoned land. This site is heavily vegetated.

The site is located south of the Heatherbrae industrial centre and is surrounded by vegetated RU2 Rural Landscape to the east, SP1 Hunter Water Corporation to the south and west, and cleared E4 General Industrial to the north (Figure 9). The SP2 Classified Road forms part of the Heatherbrae Bypass and is under construction.



Figure 9: Location of Masonite Road, Heatherbrae site

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Heritage, Land Zoning and Lot Size maps and are suitable for community consultation.

## 2 Need for the planning proposal

The planning proposal is not a result of the Local Strategic Planning Statement or a strategic study or report.

The LEP amendment addresses inaccuracies with the current LEP created through either error or processes that have occurred separate to the LEP.

Including the special flooding considerations clause is a policy change for Port Stephens. It will improve the assessment of sensitive and hazardous development on flood prone land.

These changes are supported and reflect the underlying intent of the *Hunter Regional Plan 2041* and *Greater Newcastle Metropolitan Plan 2036* to ensure planning frameworks support biodiversity conservation, heritage values and build resilience to natural hazards.

The Administrative Amendment 2023 Planning Proposal is the only way to address the proposed matters.

## 3 Strategic assessment

### 3.1 Hunter Regional Plan 2041

The following table provides an assessment of the planning proposal against relevant aspects of the Hunter Regional Plan 2041. Noting the scope of the planning proposal, only limited planning proposal strategies apply (Table 4).

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
<b>Objective 6:</b> Conserve heritage landscapes, environmentally sensitive areas, waterways and drinking water catchments.	

Strategy 6.3 Planning proposals will ensure the biodiversity network is protected within an appropriate conservation zone unless an alternate zone is justified following application of the avoid, minimise, offset hierarchy.	The planning proposal is consistent with Strategy 6.3 due to the rezoning of Lot 2 DP 1224780 from C2 Environmental Conservation land to C1 National Parks and Nature Reserves now that the land is in the Medowie State Conservation Area. This is alongside four other lots proposed to be rezoned from RU2 Rural Landscape and C3 Environmental Management to C1 located in Columbey National Park. Therefore, the highest level of environmental protection is being granted to these parcels of land.
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#### **Greater Newcastle District Planning Priority 1: Prioritise housing within 30 minutes of Williamtown SAP**

Priority locations for future housing to service the SAP include Nelson Bay and Fern Bay.	<p>The Williamtown Special Activation Precinct (SAP) was subject to the 2023 NSW Government's Strategic Infrastructure Review. Following consideration of the review's findings, the NSW Government has decided not to proceed with the project.</p> <p>Despite this, the Newcastle Airport, Williamtown RAAF and the Astra Aerolab is a nationally significant aviation and defence hub that provides significant employment in the region. Delivering housing within 30 minutes of the precinct remains a priority.</p> <p>It is not anticipated that the planning proposal would significantly affect housing growth in these areas. Much of the land within 30 minutes of Williamtown is unaffected by flooding. For areas that are affected, the planning proposal does not prohibit development; it would require additional development assessment of flooding for the certain uses identified in the clause. Housing types affected include boarding houses, group homes, hostels, and seniors housing.</p>
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The planning proposal implements strategies relating to local strategic planning:

- Adoption of the special flood considerations clause – Strategy 7.7 Local strategic planning will demonstrate alignment with the NSW Government's natural hazard management and risk mitigation policy framework including: Floodplain Development Manual and the Flood Prone Land Policy.
- Updating the heritage schedule for the courthouse – Strategy 6.6 Local strategic planning will ensure all known places, precincts, landscapes and buildings of historic, scientific, cultural, social, archaeological, architectural and aesthetic significance to the region are identified and protected in planning instruments.

## 3.2 Greater Newcastle Metropolitan Plan 2036

The Department released the Greater Newcastle Metropolitan Plan 2036 in September 2018. It applies to the Port Stephens LGA and contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the plan as outlined below in Table 5.

**Table 5 Greater Newcastle Plan consistency assessment**

Actions	Justification
Action 7.1: Greater Newcastle councils will align local plans to: ensure an adequate supply of employment land, including industrial zoned land, to cater for demand of urban services in accessible locations.	Consistent. Item 4 seeks to correct the minimum lot size in an existing industrial area facilitating the subdivision of the site and new employment land to be released.
Action 12.2: Greater Newcastle councils will identify local blue and green corridors and continue the rehabilitation of waterways.	Item 3 seeks to rezone five lots to C1 National Parks and Nature Reserves, extending green corridors consistent with the intent of Action 12.2.
Action 14.1: Greater Newcastle councils will apply the following principles to land use planning and development assessment decisions: employ risk-responsive land use controls so that new development does not occur in high risk areas	Item 1 seeks to insert optional clause 5.22 Special Flood Considerations to ensure flood risks are appropriately considered in development stages. Therefore, is consistent with strategy 14.

### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning statement consistency assessment**

LSPS priorities	Justification
Planning Priority 2: Make business growth easier	Item 4 seeks to correct the minimum lot size in Heatherbrae, an industrial estate to support subdivision and development. Therefore, supporting industrial business growth.
Planning Priority 7: Conserve biodiversity values and corridors	Item 3 seeks to rezone five lots to C1 National Park and Nature Reserves. Therefore, supporting conservation of high biodiversity values and corridors in the Port Stephens LGA.
Planning Priority 8: Improve resilience to hazards and climate change	Item 1 seeks to insert optional clause 5.22 Special Flood Considerations into the LEP and thereby ensures accurate and appropriate risk assessment in relation to development.

### 3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	Consistent with the Hunter Regional Plan 2041 and the Greater Newcastle Metropolitan Plan

		2036.
3.1 Conservation Zones	Consistent	Item 3 is consistent as five lots are being proposed to be rezoned to C1 National Parks and Nature Reserves. This is the highest level of protection.
3.2 Heritage Conservation	Consistent	Item 2 is consistent as the current street address and property description will be applied to the heritage item.
4.1 Flooding	Consistent	Item 1 is consistent by applying clause 5.22 Special Flood Considerations to ensure relevant matters are considered for higher risk land uses and land up to the probable maximum flood event.
7.1 Employment Zones	Consistent	Item 4 is consistent as change to the Lot Size standard will support the subdivision of affected industrial land, and therefore promote employment in the area.
9.2 Rural Lands	Consistent	Item 4 is consistent because the change proposed to the minimum lot size (through the proposed Gateway condition) would not change the ability for the land to be used for an agricultural operation. The land forms part of a National Park or Nature Reserve already, so there is currently no potential for an agricultural operation to occur on the land.



## 3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
<b>SEPP (Biodiversity and Conservation) 2021</b>		
Chapter 2 Vegetation in non-rural areas	Consistent	Land to which this chapter applies includes land zoned C2 Environmental Conservation and C3 Environmental Management and that relates to Item 3. These lands are to be zoned C1 National Parks and Nature Reserves and so the chapter will no longer apply.
Chapter 4 Koala habitat protection 2021	Consistent	In Item 2 Lot 2 DP 1224780 has a parcel of land which is classified as preferred koala habitat with a buffer. Therefore, Item 2 is consistent with Chapter 4 as it conserves this land as C1 National Parks and Nature Reserves.

## 4 Site-specific assessment

### 4.1 Environmental

Item 3 seeks to rezone 5 lots from RU2 Rural Landscape, C2 Environmental Conservation and C3 Environmental Management to C1 National Parks and Nature Reserve. This rezoning seeks the highest level of protection to be provided and would have a positive environmental impact protecting land with high biodiversity values. Identifying the land as C1 in the LEP would provide greater transparency for the community and adjoining landowners about the conservation outcomes intended for that land.

Item 4 seeks to facilitate the subdivision of industrial land by correcting an error with the minimum lot size standard. Enabling subdivision is unlikely for the E4 portion of the site is unlikely to result in any adverse biodiversity impacts as the site has already been cleared (Figure 9).

All other items are unlikely to have any environmental impact.

### 4.2 Social and economic

The proposed amendments are considered to have positive social outcomes. The PP is proposed to remove errors and anomalies. Item 2 will identify the correct property details for a local heritage item to provide certainty for future development assessment. Item 3 will signal the area's biodiversity value and item 4 will allow industrial development to occur in Heatherbrae's industrial area.

Item 1 will introduce a new policy approach for sensitive and hazardous development and land that Council considers warrants special consideration, allowing a statutory level of assessment to occur in relation to development of those uses in flood prone areas. This will improve the resilience of Port Stephens to major flood events over the long term.

## 4.3 Infrastructure

The changes proposed are administrative in nature. They are unlikely to have any impact on infrastructure demand.

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as standard under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

The proposal does not identify any agencies to be consulted. Noting the administrative nature of the amendments, no agency consultation is required.

## 6 Timeframe

Council proposes a 8 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as standard.

The Department recommends an LEP completion date of 4 November 2024 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is for administrative amendments and the adoption of a standard instrument optional clause the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Recommendation

It is recommended the delegate of the Secretary:

- Note the consistency with section 9.1 Ministerial directions – 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 7.1 Employment Zones, 9.2 Rural Lands.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. Update the explanation of provisions and mapping for Item 3 of the planning proposal to note the that the minimum lot size standard would be changed to show that no development standard would apply.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:

- (a) the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023).
  - (c) Public exhibition should commence within one month of the date of the Gateway determination.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act.
  4. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 4 November 2024 be included on the Gateway.



6/3/2024

Ben Holmes

Manager, Central Coast and Hunter



28/3/2024

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