

Hunter and Central Coast Regional Planning Panel

JRPP No	2019HCC-4
DA Number	16-2019-445-1
Local Government Area	Port Stephens
Proposed Development	Commercial premises (multiple-tenancies), medical centre, retail premises (pharmacy), Centre-based childcare facility (126 place), site works, civil works, signage, landscaping and one into four lot Torrens title subdivision.
Street Address	795 Medowie Road, Medowie 2318
Applicant/Owner	Applicant – Medowie Retail Unit Trust Owners – Port Stephens Council
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 7, Part 3 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , being a Council related development with a capital investment value over \$5 million.
List of All Relevant s4.15(1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 – Remediation of Land • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No 44—Koala Habitat Protection • State Environmental Planning Policy (Educational Establishment and Child Care Facilities) 2017 • State Environmental Planning Policy 64 – Advertising and Signage • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Port Stephens Local Environmental Plan 2013 (PSLEP2013) <p>Development Control Plan: s4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> • Port Stephens Development Control Plan 2014 (DCP2014)
List all documents submitted with this report for the panel's consideration	<p>Attachment 1 – Development Plans</p> <p>Attachment 2 – General Terms of Approval from Rural Fire Service (RFS)</p> <p>Attachment 3 – Recommended Conditions of Consent</p> <p>Attachment 4 – Schedule of Appendices for application supporting documentation</p> <p>Attachment 5 – External agency advice from Department of Defence</p>

	Attachment 6 – External agency advice from Hunter Water Corporation Attachment 7 - External agency advice from Ausgrid
Recommendation	Approval with conditions
Report by	Dylan Mitchell – Senior Development Planner
Report date	4 March 2020

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a development application (No. 16-2019-445-1) for a commercial premises (multiple-tenancies), medical centre, retail premises (pharmacy), centre-based childcare facility and one into four lot Torrens title subdivision of proposed Lot 4 at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257).

The key components of the development include the following:

- Torrens title subdivision - one (1) into four (4) lots;
 - Lot 1: 3541m²
 - Lot 2: 2401m²
 - Lot 3: 4129m²
 - Lot 4: 2225m²
- Commercial premises – Construction of a 776m² commercial premises comprising 6 tenancies on proposed lot 2;
- Medical centre, retail and commercial premises - Construction and use of a 1,285m² multi-tenancy building comprising 6 commercial uses (lower order uses not nominated), retail premises (pharmacy) and a medical centre on proposed Lot 4;
- Construction and use of a 804m² centre-based childcare facility on proposed Lot 3, catering for 126 children;
- Works on proposed lot 1 will be limited to site and civil works, to facilitate future development of the lot;
- Site and civil works;
- Site landscaping;
- Parking and vehicle manoeuvring; and
- Associated building and site signage.

The subject site, legally identified as Lot 1 DP 1215257 measures 53 ha in size and is irregular in shape. The lot is physically divided into three areas by the recently constructed Muir Street and Peppertree Road (refer to Figure 1). A one into five lot Torrens title subdivision was approved for the site in April 2019, which once acted on, would formalise the three areas of the subject site divided by the recently constructed roads.

The site is zoned part B2 Local Centre, R2 Low Density Residential and RE1 Public Recreation. However, the site area subject to the development is confined to approved Lot 4 created under DA 16-2018-789-1, which is wholly zoned B2 Local Centre. Commercial premises', medical centres, and centre-based child care facilities are all permitted with consent within the B2 zone. The proposed development is considered to be consistent with the zone objectives.

The application was notified and advertised for 28 days from 8 August 2019 to 5 September 2019 in accordance with the Port Stephens Development Control Plan 2014. During this time no submissions were received.

The application is Integrated development in accordance with the provisions of s4.46 of *Environmental Planning and Assessment Act 1979 (EP&A Act)*, and was referred to the Rural Fire Service (RFS) for a Bushfire Safety Authority under *Rural Fires Act 1997*. A Bushfire Safety Authority is required as the application includes a special fire protection purpose (centre-based childcare facility) and the subdivision of land which could be used for residential purposes.

RFS issued a Bushfire Safety Authority on 30 August 2019, which included conditions relating to asset protection, water and utilities, access, and design and construction standards.

The key issues in respect of the assessment of the application related to impacts to residential amenity, acoustic impact, drainage and water quality, traffic and parking. To address these issues specialist studies were submitted in support of the application, including noise, traffic impact, contamination and stormwater reports. Additional information from the applicant was also requested during the assessment to address these key issues. The studies were assessed by Council officers and, where appropriate, recommendations and mitigation measures outlined in the specialist studies have been included in the conditions of consent.

The proposal is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 of the *EP&A Act* for Council related development (Council owned land) with a capital investment value over \$5 million.

The development has been assessed under Section 4.15 of the EP&A Act and is considered satisfactory. Accordingly, it is recommended that the application be approved subject to conditions of consent contained in **Attachment 3**.

1. RECOMMENDATION

That DA16-2019-445-1 for a commercial premises (multiple-tenancies), medical centre, retail premises (pharmacy), centre-based childcare facility and one into four lot Torrens title subdivision of approved Lot 4 at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257) be approved subject to the conditions in **Attachment 3**.

2. INTRODUCTION

This report provides a detailed overview of the proposed construction of a commercial premises (multiple-tenancies), medical centre, retail premises (pharmacy), centre-based childcare facility and one into four lot Torrens title subdivision at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257). The development application is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 of the *EP&A Act* for Council related development with a capital investment value over \$5 million.

3. BACKGROUND

In 2016, Council adopted the Medowie Planning Strategy (the strategy). The strategy provides local direction for land use planning and sustainable growth within Medowie over the 20-year period from

2016 - 2036. The Strategy forecasts a maximum growth scenario of 17,500 people by the year 2036 (from 10,300 people in 2016). The area is expected to accommodate 2,400 new dwellings in residential release areas and additional 180 in rural residential release areas. Approximately 9.0 hectares of are for general commercial rezoning was identified in the strategy. The site subject to this application is identified is located within the Medowie commercial precinct under the Medowie Town Centre Masterplan and identified for future commercial development.

The site has previously been subject to a rezoning via amendment of the Port Stephens LEP 2013 (Amendment No. 26) and was gazetted on 13 September 2018. The amendment rezoned part of the subject site from R2 Low Density Residential to B2 Local Centre. The objective of the rezoning was to facilitate potential commercial development of the land consistent with the Medowie Planning Strategy.

The site was previously subdivided in 2015 (Council record number 16-2015-6006-1) to enable the extension of Peppertree Road and Muir Street, resulting in the current lot configuration. There are a number of additional historic application records relating to the parent lot dating back to 1983. In 2019, development consent was granted under DA 16-2018-789-1 for a one into four lot Torrens title subdivision to formalise the three currently divided sections of the subject site separated as a result of the Peppertree Road and Muir Street extensions, as illustrated in **Figure 2** below. Despite development consent being granted, the approved lots have not been formally registered with NSW Land and Registry Services. A condition has been recommended requiring the parent lot under this DA be registered prior to the issue of an Occupation Certificate or Subdivision Certificate.

A development application for an office premises was approved by Council in August 2019 on approved Lot 2 as created under DA 16-2018-789-1. A further development application was approved by Council on 10 December 2019 for a service station, food and drink premises and vehicle workshop on approved Lot 3.

A development application for a Food and Drink Premises – McDonalds restaurant is currently under assessment on proposed Lot 1 of this development application.

4. SITE DESCRIPTION

The subject site, comprises a single allotment, legally identified as Lot 1 DP 1215257 and measures 53 ha in size with an irregular shape. The topography of the site falls gently to the west. The lot is physically divided into 3 areas by the recently constructed Muir Street and Peppertree Road. To the east of Peppertree Road the site is vacant and cleared, the west of the site contains dense vegetation.

The site area subject to the development includes proposed Lot 4 as approved under DA 16-2018-789-1, as shown in **Figure 1** below (diagonal hashing denotes the area subject to development). The area covers 1.22ha of cleared land and contains frontage to Peppertree Road to the North and Muir Street to the west.

Surrounding Land Uses

Land zoned R2 low density residential is located to the north and the east. The land immediately adjoining to the north has consent for a two into 39 Torrens title subdivision, approved in 2019 by Council.

Immediately west of the site is a Coles supermarket and further west beyond the vegetated section of the lot is Boyd sporting Oval and land zoned R5 large lot residential.

To the south and south west, the site adjoins the existing Medowie Local Centre which comprises a mix of retail/business uses, and several food and drink premises.

Immediately to the south is a Woolworths supermarket. Approximately 160m further south, is the Medowie Community Centre.



Figure 1: Satellite image overview of site (diagonal hashing denotes approved Lot 4 that includes the area subject to development)

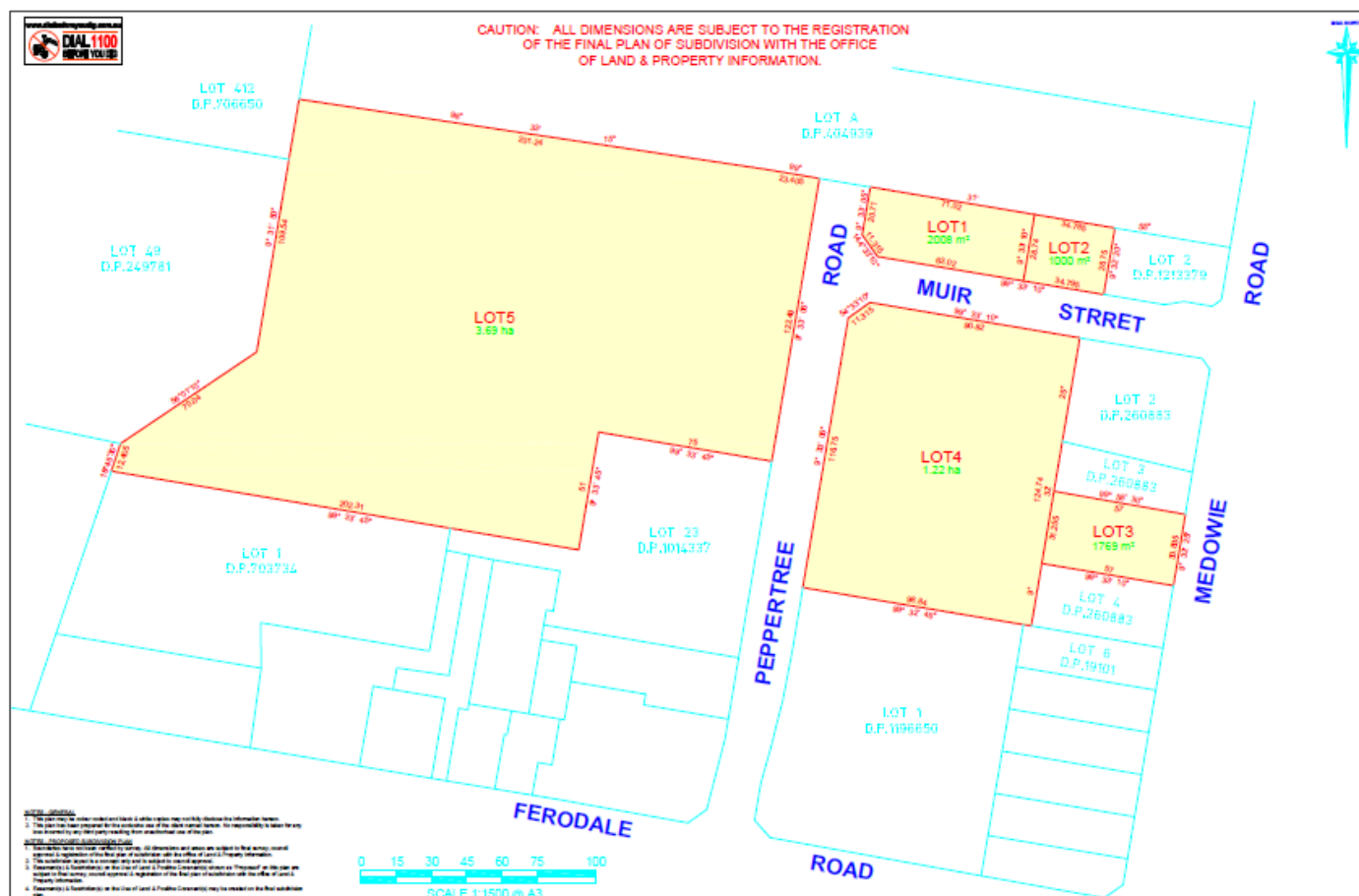


Figure 2: Approved subdivision Plan at 795 Medowie Road as per Approved DA 16-2018-789-1.

The site is subject to a number of environmental constraints (as mapped on Councils' GIS system) including:

- Bushfire Prone Land
- Acid Sulfate Soils – Class 5
- Koala habitat (preferred)
- Endangered Ecological Community- Blue Gum High Forest and Swamp Sclerophyll Forest
- Flood Prone Land (partial in the western section of the parent lot)
- RAAF Base Williamstown and Salt Ash Air Weapons Range – Height Trigger – 45m
- RAAF Base Williamstown Bird Strike Group B
- Hunter Water Corporation Special Area - Grahamstown Dam
- OEH Biodiversity Values map
- Stormwater drainage problem area
- Noxious Weeds – Alligator Weed

Site Inspection

A site inspection was carried out on 10 December 2019 however, access to some parts of the site was restricted due to construction associated with services installation for the approved subdivision (DA 16-2018-798-1). A second site inspection occurred on 14 February 2020. The subject site can be seen in the photos below:



Photograph 1 – Site viewed from Pepper Tree Road toward existing Woolworths development to the south



Photograph 2 – Site viewed from Pepper Tree Road towards the north



Photograph 3 – Existing dwellings located to the north east of the site



Photograph 4 – Existing dwellings located to the south east of the site



Photograph 5 – View from existing dwellings toward existing Coles and Woolworths Development to the west of the site

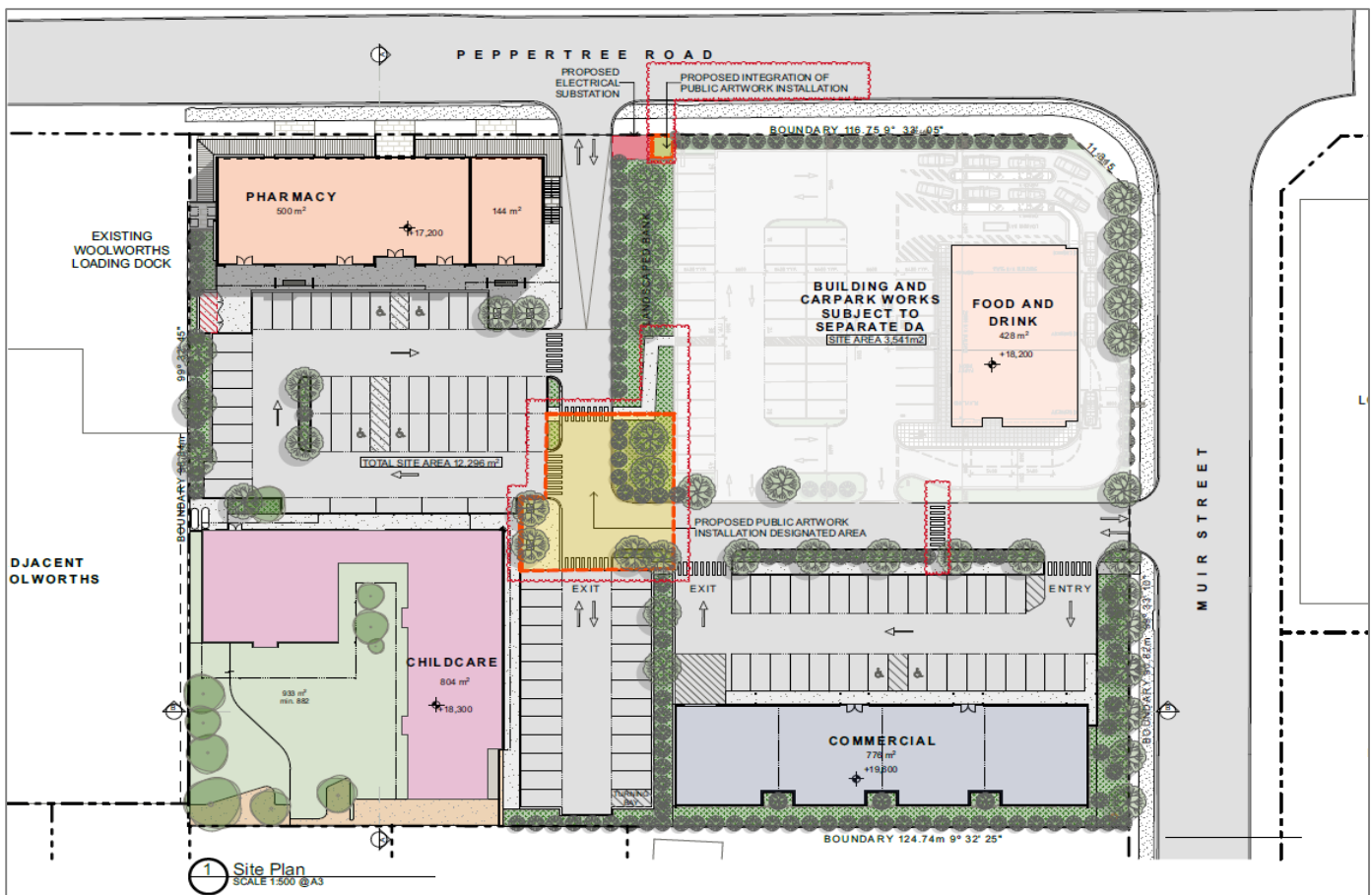
5. PROPOSAL

The development proposes a one into four lot Torrens title subdivision and the construction of a commercial premises, medical centre, retail premises and centre-based childcare facility, as shown in **Figure 3** below.

The key components of the development include the following:

- Torrens title subdivision - one (1) into four (4) lots (see **Figure 4** below);
 - Lot 1: 3541m²
 - Lot 2: 2401m²
 - Lot 3: 4129m²
 - Lot 4: 2225m²
- Commercial premises – Construction of a 776m² commercial premises on proposed Lot 2;
- Medical centre, retail and commercial premises - Construction and use of a 1,285m² multi-tenancy building comprising commercial uses, retail premises (pharmacy) and a medical centre on proposed Lot 4;
- Construction and use of a 804m² centre-based centre-based childcare facility on proposed Lot 3, catering for 126 children;
- Works on proposed lot 1 will be limited to site and civil works, to facilitate future development of the lot;

- Site and civil works;
- Site landscaping;
- Parking and vehicle manoeuvring; and
- Associated building and site signage.



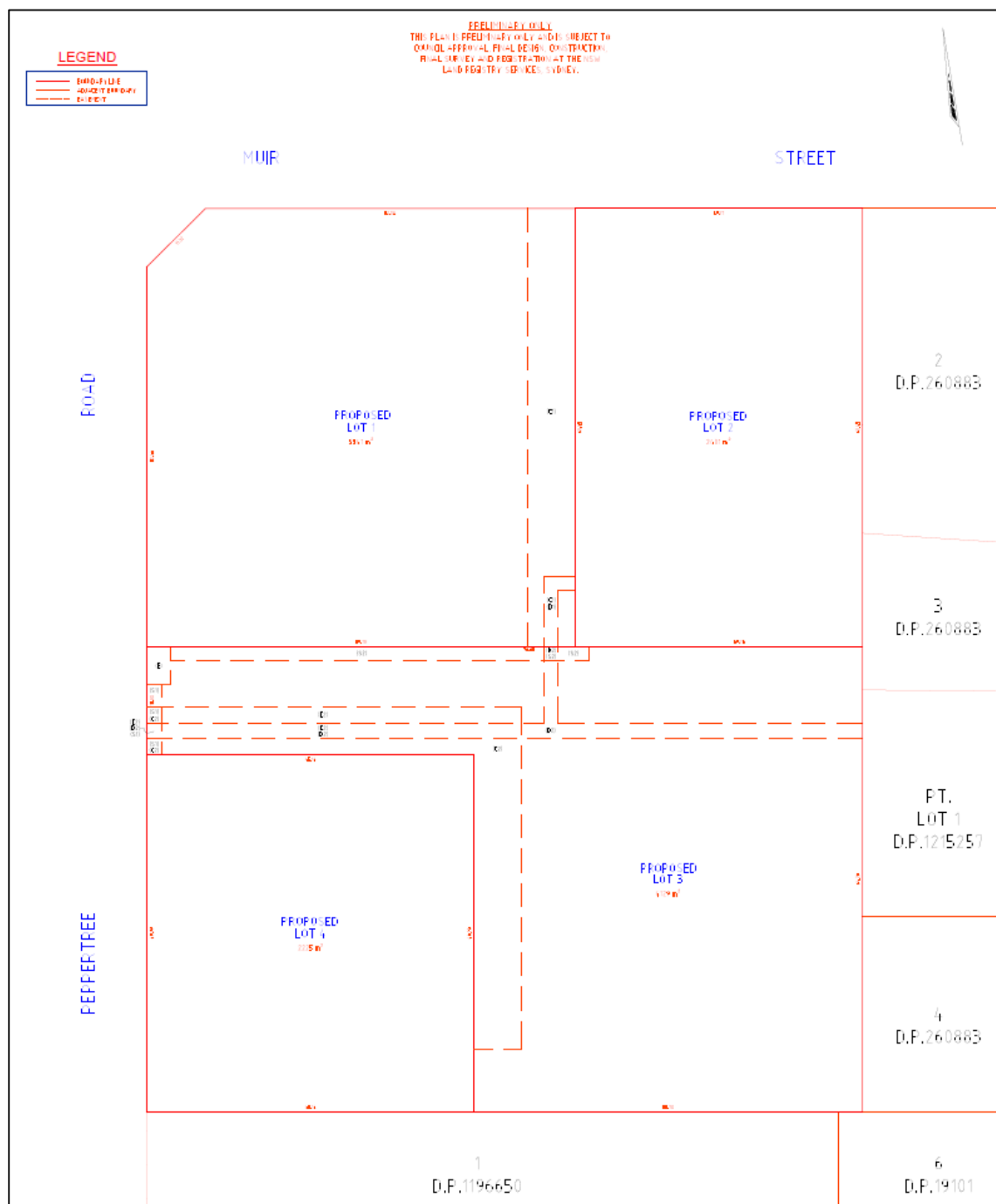


Figure 4: Proposed Subdivision Plan

Commercial premises (776m²)

The building includes a single storey freestanding commercial premises with a Gross Floor Area (GFA) of 776m², located on proposed Lot 2. The material finish of the building includes precast concrete wall panels, metal parapet capping, alucobond cladding and clear glass with powder coated frames. The tenant and lower order use of the commercial premises is yet to be defined and would be subject to a future applications.

Car parking is located to the west of the building with one way access from the common internal access road. A loading/deliveries bay is located at the southern end of the building. Business identification signage is integrated within the building as flush mounted panels.

The proposed hours of operation for the commercial building are included within Table 1 below.

Table 1: Proposed hours of operation for commercial building

Commercial		Proposed Hours
Operation	Mon-Fri	8am – 6pm
	Sat	9am – 5pm
	Sun / Public Holidays	9am – 5pm

Commercial premises and medical centre building (frontage to Peppertree Road)

The commercial premises and medical centre building is located on proposed Lot 4. The building includes a two storey freestanding commercial building with a GFA of 1,285m². The building is of a modern design, utilising a combination of materials including brickwork, metal parapet capping, alucobond cladding and clear glass doors and sidelights on the frontage to Peppertree Road.

The building is proposed to include a medical premises with a GFA of 205m², a retail premises (pharmacy) with a GFA 295m² and commercial premises with a GFA of 144m² located on the upper floor level. Another six commercial premises, each with a GFA ranging between 100m² and 141m² are to be located on the lower floor level. Lower order commercial uses have not yet been defined for the six tenancies and would be subject to a future applications.

Car parking associated with this premises is located on Peppertree Road and to the rear of the building, with access via the common internal access road and Pepper Tree Road. No dedicated vehicle delivery location has been identified, with deliveries to be made by light commercial/utility vehicles in standard parking spaces. Awnings and associated hanging blade signage are proposed over a public thoroughfare to the Peppertree Road frontage. Additional flush mounted panel signage is integrated into the building design above entry points for each tenancy and the north and south facing walls of the building.

The proposed hours of operation for the commercial building are included within Table 2 below.

Table 2: Proposed hours of operation for Commercial premises and medical centre building

Proposed Hours			
<i>Day</i>	<i>Pharmacy</i>	<i>Medical</i>	<i>Commercial</i>
Mon -Fri	8am – 7pm	8am – 7pm	8am – 6pm
Sat	8am – 5pm	8am – 7pm	9am – 5pm
Sun / Public Hols	8am – 5pm	8am – 5pm	9am – 5pm

Centre-based childcare facility

The proposed centre-based childcare centre is located on proposed Lot 3, comprising a single storey 804m² purpose designed building and an additional 933m² outdoor play area. The material finish of the building includes vertical groove cladding, combined with a painted vertical joint line cladding.

Car parking is located to the north and west of the building, with parallel parking to the front of the building enabling drop off directly in front of the building to enhance pedestrian safety. Vehicle access is via the common internal access road.

The centre-based childcare facility is proposed to include a total of 126 places for children aged between 6 weeks and 6 years old across 6 rooms. Three children's toilet facilities are provided to be shared between two rooms. Other facilities include an office, accessible toilet facilities, reception area, kitchen, staff room, laundry, garbage room, and storage. Two business identification signs are to be flush mounted with the building for the western elevations.

The proposed hours of operation for the centre-based child care facility are included within Table 3 below.

Table 3: Proposed hours of operation of the centre-based childcare centre

Childcare	Proposed Hours	
Operation	Mon-Fri	6am – 7pm
	Sat	Closed
	Sun / Public Hols	Closed

6. PLANNING ASSESSMENT

6.1 *Environmental Planning and Assessment Act 1979 (EP&A Act)*

6.1.1 *Section 2.15 – Functions of Sydney district and regional planning panels*

Section 4.7 and Schedule 2 of the *EP&A Act* and Schedule 7, Part 3 of the *State Environmental Planning Policy (State and Regional Development) 2011* requires the Hunter and Central Coast Regional Planning Panel (HCCRPP) determine regionally significant development.

The HCCRPP is the determining authority for the subject application as the proposal is regionally significant development as identified under Schedule 7 Clause 3 of *State Environmental Planning Policy (State and Regional Development) 2011* ('SEPP State and Regional Development'), being for a Council related development with a capital investment value (CIV) over \$5 million. The cost summary report submitted with the application estimates the proposed CIV at \$8,152,406.

6.1.2 *Section 4.46 – Integrated development*

The proposal is integrated development pursuant to Section 4.46 of the *EP&A Act* as approval is required from the Rural Fire Service (RFS) under section 100B of the *Rural Fires Act 1997*. Section 100B of the *Rural Fires Act 1979* requires that a Bushfire Safety Authority must be obtained for development that is a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes, or development of bush fire prone land for a special fire protection purpose.

The proposal includes subdivision of land that could be used for residential purposes and the proposed centre-based childcare facility is a special fire protection purpose as defined in the *Rural Fires Act 1979*. Therefore, the proposal including subdivision and a centre-based childcare facility requires a Bushfire Safety Authority and the development application has been referred to the NSW RFS for approval, as integrated development. The RFS issued a Bushfire Fire Safety Authority on 30 August 2019 (**Attachment 2**) subject to conditions relating to asset protection zones, water and utilities, access, design and construction and landscaping.

6.1.3 Section 4.15 Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.4.15 (1) EP&A Act as follows:

6.1.3.1 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011, identifies the types of development that are; State significant development, State significant infrastructure and critical State significant infrastructure, and regionally significant development. Schedule 7 of the SEPP defines development that is regionally significant, and includes a Council related development (Council owned land) with a capital investment value (CIV) over \$5 million. As the proposed development has a CIV over \$5 million the Hunter and Central Coast Joint Regional Planning Panel is the determining authority.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

The Port Stephens Council Comprehensive Koala Plan of Management (CKPoM), was prepared in accordance with *State Environmental Planning Policy No. 44 - Koala Habitat Protection* (SEPP 44). Compliance with the Port Stephens Council CKPoM will constitute compliance with SEPP 44 for relevant matters in the LGA.

The Port Stephens Council Koala Habitat Planning Map maps the western portion of the site as 'preferred' Koala habitat and 'preferred 100m buffer over marginal habitat'. Despite this, there are no works proposed at this location as the development is confined to land on the eastern side of Peppertree Road, partially mapped '100m buffer over cleared land' and 'link over cleared land'. The proposal does not propose the removal of any vegetation as the area subject to development has already been substantially modified and cleared of vegetation under previous development consents. On this basis, the site is considered to be low risk for containing threatened biodiversity and therefore an ecological assessment was not required to be submitted with the application.

Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM and the proposal is considered to be consistent with the requirements of Sepp No. 44.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

The provisions of SEPP BASIX does not apply to the proposed development due to the Building Code of Australia (BCA) classification of the buildings. The provisions of this SEPP only apply to Class 1, Class 2 and parts of Class 4 buildings under the BCA.

The buildings that are proposed on site are classified as either Class 5 (Commercial Premises), Class 6 (Retail premises - pharmacy) or Class 9b buildings (centre-based childcare facility) and are subject to Section J energy efficiency requirements under the BCA that would be addressed as part of any Construction Certificate issued.

State Environmental Planning Policy 64 – Advertisement and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) sets out planning controls for advertising and signage in NSW. The SEPP requires signage to be compatible with the future character of an area, provide effective communication in suitable locations and be of high quality design and finish.

The proposal incorporates a combination of flush mounted panel and hanging blade business identification signage throughout the development.

The matters for consideration for SEPP No. 64 include Clause 3, which outlines the objectives of the SEPP and Schedule 1 which provides an assessment framework to determine if the proposed signage scheme is acceptable in terms of its impacts. An assessment of the proposed signage scheme against SEPP No. 64 matters for consideration is outlined in the table below.

Matters for consideration	Assessment comment
Clause 3 – Aims and objectives	<p>While detailed specifications for tenancy signage is not available as the use of all tenancies are not known, consideration is given to the signage with respect to the location, size, dimensions and format of signage. The proposed signage is compatible with the desired character of the area and will be of an appropriate height, scale and proportion with respect to the sites location within the Medowie Local Centre.</p> <p>The proposed signage is considered consistent with the aims and objectives of Clause 3 of the SEPP.</p> <p>Further detailed assessment against Schedule 1 of the SEPP is provided below.</p>
Schedule 1 - Assessment criteria	
<p><i>1 Character of the area</i></p> <p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The proposed signage is compatible with the emerging and desired character of the area. The signage is considered an appropriate height, scale and proportion with respect to the site's location within the Medowie Local Centre and consistent with other existing signage within the locality.</p>
<p><i>2 Special areas</i></p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The subject site is not located in proximity to any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. It is considered that the proposal would not detract from the amenity of visual quality of surrounding areas.</p>
<p><i>3 Views and vistas</i></p> <p>Does the proposal obscure or compromise important views?</p>	<p>The proposal does not obscure or compromise, any important views or vistas.</p>

<p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>Signage is integrated with the design of buildings, being generally flush mounted and not protruding above any of the structures on which they are located.</p> <p>The proposed signage has been appropriately located to not obstruct the viewing rights of other advertisers.</p>
<p><i>4 Streetscape, setting or landscape</i></p> <p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> <p>Does the proposal require ongoing vegetation management?</p>	<p>The proposed height and scale of the signage matches that of other existing signs in the locality and is appropriate in the context of the streetscape setting of the Medowie Town Centre.</p> <p>The proposed signage contributes to the streetscape through the provision of logical signposting identification of the proposed development whilst remaining consistent with the existing streetscape.</p> <p>The proposed signage is integrated within the built form and does not present a cluttered appearance.</p> <p>The proposed signage does not screen unsightliness or protrude above the proposed building structures.</p> <p>The proposal would not require ongoing vegetation management.</p>
<p><i>5 Site and building</i></p> <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposed signage is integrated within the built form and is compatible in terms of scale and proportion to the proposed buildings and site.</p> <p>The proposed signage is simple in form, so as to allow the inclusion of graphical information on the signage to be immediately apparent to the observer.</p>
<p><i>6 Associated devices and logos with advertisements and advertising structures</i></p> <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>The proposed signage includes elements of appropriately illuminated signage and conditions of consent have been recommended to regulate levels of illumination in accordance with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.</p>
<p><i>7 Illumination</i></p>	

<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>The proposed illumination will not result in significant glare to the surroundings, pedestrians, traffic, residences or other accommodation, or aircraft, nor would it detract from the amenity of nearby residences. Conditions of consent have been recommended requiring compliance with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.</p> <p>The signage is not proposed to include adjustable illumination however, this is not considered to be necessary subject to compliance with Australian standards.</p> <p>Illumination is proposed during operational hours only.</p>
<p>8 Safety</p> <p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians or bicyclists?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>The proposed signage will not reduce the safety of the adjacent roads or footpaths.</p> <p>The proposed signage is integrated into building design, thereby eliminating the possibility for obstruction of sight for pedestrians or cyclists.</p>

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The Vegetation SEPP works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 3 of the Vegetation SEPP provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

The proposal does not seek consent for the removal or pruning of any trees, therefore the application of this division is not applicable.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

Under Clause 7, subclause 1 of *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55), a consent authority must not grant consent unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state*

(or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site has historically been used as an orchard (agriculture) which is an activity listed as a potentially contaminating activity under the contaminated land planning guidelines.

Clause 7, subclause 2 of SEPP No. 55 requires that before determining an application for consent to carry out development that would involve a change of use on potentially contaminated land, the consent authority must consider a report specifying the findings of a preliminary investigation. The proposal involves a change of use to a commercial premises and centre-based childcare facility and accordingly, a preliminary investigation of the land has been carried out, including assessment of Areas of Environmental Concern (AECs) and Potential Contaminants of Concern (PCOCs) to conclude the likelihood of site contamination.

The report identifies the historical agricultural land use has a medium potential for contamination. Based on the potential risk presented by the past site uses, soil analysis was undertaken to assess for potential chemical contamination. No fill materials, no indications of hydrocarbons including staining or olfactory odours were identified or potential asbestos containing material were not identified across the targeted area of site, or in bore holes. No other potentially contaminating activities were identified across the site.

With the exception of the centre-based childcare facility, the proposed development is a less sensitive land use than the current one, and so the risk to future site users will be lower than the current situation. Based on the site history, site walkover and soil analysis results of the targeted area of site; the site presents a low human health and environmental risk and is suitable for the proposed redevelopment as a mixed-use development including a centre-based childcare facility. On this basis, the proposal is considered consistent with the requirements of SEPP 55.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

Part 3 of the SEPP provides specific development controls for early childhood education and care facilities. The following clauses are of relevance to the proposed child care centre on the site and are addressed accordingly:

Clause 22 requires the concurrence of the Regulatory Authority under the following circumstances:

- (a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or*
- (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.*

The proposal is compliant with the requirements of regulation 107 and 108 of the Education and Care Services National Regulations as detailed under the under the Child Care Planning Guidelines section below. Therefore, this clause does not apply to the development and concurrence of the regulatory authority is not required.

Clause 23 requires that the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development. The proposed child care facility has been suitably designed to achieve high levels of amenity for the occupants of the building, and to provide a safe and functional child care centre layout. The design is consistent with the objectives of the design criteria contained within Part 2 of the Child Care Planning Guideline and matters for consideration as detailed under the Child Care Planning Guidelines section below.

Clause 25 provides non-discretionary development standards in relation to the carrying out of development for the purposes of a centre-based child care facility including the following:

- (a) *location—the development may be located at any distance from an existing or proposed early education and care facility,*
- (b) *indoor or outdoor space*
 - (i) *for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or*
 - (ii) *for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,*
- (c) *site area and site dimensions—the development may be located on a site of any size and have any length of street frontage or any allotment depth,*
- (d) *colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.*

Development standard (a) is satisfied as the site is appropriately zoned for a centre-based child care facility and suitably located nearby a residentially dense area with appropriate access and parking arrangements. Noise attenuation measures are to be incorporated to mitigate impacts to adjoining residential properties.

Development standard (b) is satisfied as the indoor space and outdoor space requirements of the national regulations are met in the proposal as detailed under the Child Care Planning Guidelines section below.

Development standard (c) is met as the clause does not prescribe any restrictions to development.

Development standard (d) is satisfied as the site is not a state or local heritage item or in a heritage conservation area.

It is considered that the proposed development is generally in compliance with the aims and objectives of the SEPP. It should be noted that the development would still need to obtain service approval for the operation of the child care facility and has been included as a recommended condition of consent.

Child Care Planning Guidelines

The State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (the SEPP) determines that a consent authority must take into consideration the Child Care Planning Guideline when assessing a development application (DA) for a centre based child care facility ('child care facility'). The Child Care Planning Guidelines informs local government promote

high quality planning and design of child care facilities in accordance with the physical requirements of the National Regulations and aligns with the National Quality Framework.

The planning objectives of this Guideline are to:

- promote high quality planning and design of child care facilities in accordance with the physical requirements of the National Regulations
- ensure that child care facilities are compatible with the existing streetscape, context and neighbouring land uses
- minimise any adverse impacts of development on adjoining properties and the neighbourhood, including the natural and built environment
- deliver greater certainty to applicants, operators and the community by embedding the physical requirements for service approval into the planning requirements for child care facilities.

The applicable sections of the Child Care Planning Guidelines are the Part 2 design criteria, Part 3 Matters for Consideration and Part 4 which contains the National Regulations requirements. The proposal provides a design with a high level of amenity and is consistent with the predominant built form of the larger Medowie commercial area and is considered consistent with the objectives of the design criteria contained within Part 2 of the guideline.

Part 3 considerations provide guidance on how to design a high-quality proposal that takes account of its surroundings and any potential environmental impacts the development may cause and to be mindful of potential impacts that may arise from existing uses and conditions within a locality. The matters for consideration include following:

3.1 Site selection and location

The site is appropriately zoned for a child care facility and suitably located nearby a residentially dense area with appropriate access and parking arrangements. The potential impacts from traffic, noise, bushfire, flooding, air quality and electromagnetic fields on health, safety and wellbeing of children, staff and visitors at the centre are considered low as demonstrated in the supporting studies with the application. Noise attenuation measures are to be incorporated to mitigate impacts to adjoining residential properties.

3.2 Local character, streetscape and the public domain interface

The proposed centre-based childcare facility has been designed to be consistent with the predominant built form of the Medowie Town Centre and within the context of the proposed development which includes a range of commercial premises. The development includes minimum 1.8m fencing around the external play area which will help provide a clear transition between public and private realms.

3.3 Building orientation, envelope and design

The proposed building has been located on an independent lot and separate from the other proposed commercial operations on the site to enhance safety and amenity for the operation. Car parking is provided in close proximity to the building with good pedestrian links to further enhance safety. The design and proposed landscaping provide a visually appealing design on the front elevation and to the common car parking area.

3.4 Landscaping

The proposal includes a suitable landscape design which incorporates suitable shade trees combined with amenity landscaping and screening where appropriate. Overall, the landscaping positively contributes to the built form, providing an enhanced natural environment.

3.5 Visual and acoustic privacy

The application included the submission of a noise assessment, which has assessed the cumulative noise impact of the proposed development and adjacent land-uses on the centre-based childcare facility. The report found the proposal to be consistent with the relevant childcare centre guideline criteria for both external and internal areas of the centre-based childcare facility. The report was reviewed by Council's Environmental Health Officer who supported the findings.

3.6 Noise and air pollution

The Noise assessment submitted with the proposal incorporates both inside and outside noise level assessment on the facility. The report found that noise impacts were reduced due to the setback of the siting and location of the development and could be suitably managed through the implementation of acoustic fencing.

The development is not located near a classified road and is appropriately set back from the local roads surrounding the site, thereby providing a suitable separation distance between the facility and pollution source.

Consideration has been given to potential air quality impacts associated with the service station approved in December 2019 (DA 16-2019-339-1) on a portion of the site adjacent to the centre-based childcare facility. Assessment of the service station included consideration of the proposed centre-based childcare facility with regard to the requirements of State Environmental Planning Policy No 33—Hazardous and Offensive Development and a Preliminary Hazard Analysis Report was submitted with that application. It is not expected that the service station will result in any impact to the centre-based childcare facility by way of potential odours associated with other activities undertaken on the site. Vapour recovery equipment will be installed as part of the petrol tank systems which is designed to capture the displaced vapour and return it to the underground fuel storage tank or other appropriate vessel. Vapour recovery systems are intended to limit the emissions of fuel vapour when vehicles refuel by recovering at least 85% of the displaced vapour. The service station site has been designed and conditioned to achieve full compliance with the relevant standards for the design and management of service stations, including relevant separation distances.

Acoustic fencing is proposed along the property boundary between the child care centre and proposed service station to protect the child care centre from any potential noise generated from the service station.

3.7 Hours of operation

The proposed hours of operation between 6am - 7pm. The operational hours will not adversely impact the amenity of surrounding properties. As discussed elsewhere in this report, the recommendations made in the noise assessment will provide appropriate mitigation measures to reduce noise pollution.

3.8 Traffic, parking and pedestrian circulation

The proposed development provides suitably located parking, to enhance pedestrian safety. Car parking is located directly adjacent the building to the north and drop off spaces are available to the

west, which provide car parking separate to the commercial components of the development located on other lots.

Part 4 the Child Care Planning Guidelines apply the National Regulations to development proposals. The relevant sections are outlined below:

4.1 Space requirements—indoor space (Regulation 107)

Section 4.1 requires that every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. It is recommended that a child care facility provide: a minimum of 0.3m³ per child of external storage space and a minimum of 0.2m³ per child of internal storage space.

The indoor space and storage requirements of the national regulations are met as detailed on the plans and as noted below:

- Number of children: 126
- Required Area: 409.5m²
- Provided Area: 432m²

The proposal is consistent with the storage standards, providing formal storage and locker areas for each room as well as other internal storage areas which are in excess of the minimum requirements. Formal and informal outdoor storage is also proposed.

4.2. Laundry and hygiene facilities (Regulation 106)

Section 4.2 requires that there must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.

A specific laundry room is appropriately located within the building away from children, thereby satisfying this Regulation.

4.3 Toilet and hygiene facilities (Regulation 109)

Section 4.3 requires a service must ensure that adequate, developmentally and age appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

Age appropriate amenities are provided within each room in accordance with the Regulation as shown on the plans.

4.4 Ventilation and natural light (Regulation 110)

Section 4.4 requires services be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.

Good ventilation will be achieved through a mixture of natural cross ventilation and air conditioning. The proposal complies with the light and ventilation and minimum ceiling height requirements of the National Construction Code.

4.5 Administrative space (Regulation 111)

Section 4.5 requires a service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.

An office is appropriately located away from children's rooms, meeting the requirements of Regulation.

4.6 Nappy change facilities (Regulation 112)

Section 4.6 requires that child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.

Nappy change facilities are provided for in the babies and toddler rooms in a location which enables simultaneous supervision of children.

4.7 Premises designed to facilitate supervision (Regulation 115)

Section 4.7 requires a centre-based service ensures that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.

Surveillance from all rooms has been optimised through the use of glass windows and doors and suitable layout.

4.8 Emergency and evacuation procedures (Regulation 97 and 168)

Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including the following:

- instructions for what must be done in the event of an emergency
- an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit
- a risk assessment to identify potential emergencies that are relevant to the service.

An Evacuation Plan consistent with the requirements of Regulation 97 and 168 is required to be prepared prior to the commencement of operation of the childcare centre by the operator and has been recommended as a condition of consent.

4.9 Outdoor space requirements (Regulation 108)

Section 4.9 requires that an education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.

The proposed facility includes 993m² of unencumbered outdoor space. The facility proposes to accommodate 126 children, and therefore requires 882m² of unencumbered outdoor space is required under regulation 108. Therefore, the amount of outdoor space is sufficient for the number of children at the centre.

4.10 Natural environment (Regulation 113)

Section 4.10 provides that a facility must ensure that the outdoor spaces allow children to explore and experience the natural environment.

4.11 Shade (Regulation 114)

Section 4.11 provides that a facility must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.

The covered areas adjacent the building, combined with proposed shade sails provide shading to approximately 30% of outdoor areas. Tree plantings provide additional shading to the perimeter of the outdoor play area.

4.12 Fencing (Regulation 104)

Section 4.12 requires that any outdoor space used by children is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. Design considerations for side and rear boundary fences could include:

- being made from solid prefinished metal, timber or masonry
- having a minimum height of 1.8 metres
- having no rails or elements for climbing higher than 150mm from the ground.

2m high solid panel acoustic fencing is proposed for the eastern and southern boundaries. Appropriately high fencing (minimum 1.8m) is proposed at all other locations to enclose the outdoor space. All access gates will be fitted with childproof locks.

4.13 Soil Assessment (Regulation 25)

Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.

A targeted site investigation for potential contamination of the area of the proposed centre-based childcare facility was included with the application. Based on the potential risk presented by the past agricultural site uses, soil analysis was undertaken to assess for potential chemical contamination. No fill materials, no indications of hydrocarbons including staining or olfactory odours were identified or potential asbestos containing material were not identified across the targeted area of site, or in bore holes. No other potentially contaminating activities were identified across the site. Based on the site history, site walkover and soil analysis results of the targeted area of site; the site presents a low human health and environmental risk and is suitable for the proposed redevelopment as a mixed-use development including a centre-based childcare facility.

Following assessment against SEPP 55, it is considered that the site is not contaminated and the site is considered suitable for the proposed centre-based childcare facility.

Port Stephens Local Environmental Plan 2013

Clause 1.3 – Land to which Plan applies

PSLEP 2013 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

2.3 Zone objectives and Land Use Table

The development application has been lodged for the purposes of a commercial premises, medical centre, retail premises (pharmacy) and centre-based childcare facility. The relevant definitions are outlined below:

Commercial premises means any of the following—

- (a) *business premises*,
- (b) *office premises*,
- (c) *retail premises*.

The application notes that the majority of commercial tenants have not been identified and therefore lower order commercial uses have not been identified for all tenancies. Notwithstanding, commercial premises are permitted with consent in the B2 zone. A condition has been recommended for a separate development application for the fit out and use of the each commercial tenancy that does not nominate a lower order use (being business premises, office premises or retail premises).

Retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale). The application includes a retail premises being a shop (pharmacy) which is permitted with consent in the B2 Zone.

Centre-based child care facility means—

(a) A building or place used for the education and care of children that provides any one or more of the following—

- (i) *long day care*,
- (ii) *occasional child care*,
- (iii) *out-of-school-hours care (including vacation care)*,
- (iv) *preschool care*, or

(b) an approved family day care venue (within the meaning of the *Children (Education and Care Services) National Law (NSW)*).

The proposal includes a centre-based child care facility for long day care for 126 children, which is permissible with consent in the B2 zone.

Clause 4.1 – Minimum subdivision lot size

Proposed Lots 1 to 4 do not have a minimum lot size allocated on the lot size map under the LEP, however they are considered of an appropriate size and scale to support a mix of retail, business, entertainment and community uses, and specialised retail premises, in line with the B2 zone objectives. Accordingly, the proposal is considered consistent with the objectives of this clause.

Clause 4.3 Height of buildings

The subject site has a maximum building height of 8m under the PSLEP 2013. The proposal includes a maximum height of 7.5m for all structures and is therefore compliant with the requirements of this clause.

Clause 5.10 Heritage conservation

The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance. The site is not listed as locally significant under Schedule 5 of the *PSLEP 2013* or on the State Heritage register. An AHIMS search did not reveal any Aboriginal sites on or in proximity to the

subject site. Furthermore, the site has previously been subject to previous disturbance from its historical land use as an orchard and associated residential use.

Notwithstanding, an advice is recommended to be included, noting that in the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage. The site is mapped as Class 5 Acid Sulfate Soils and as such works within 500m of adjacent Class 1, 2, 3 or 4 land likely to be below 5m Australian Height Datum (AHD) is considered a potential environmental risk. The site is not located within 500m of adjacent Class 1, 2, 3 or 4 land nor are works proposed below 5m AHD, therefore an Acid Sulfate Soils Management Plan is not necessary to accompany the application.

Notwithstanding, a condition has been recommended that will require the preparation of an ASS Management Plan in the event that ASS is encountered in the zone of works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Clause 7.2 Earthworks

The objectives of clause 7.2 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument and therefore require consent from Council.

The application includes a site regarding plan. The proposed development includes earthworks associated with the levelling of the building footprint, car parking and stormwater drainage. Proposed earthworks are not considered to result in significant impacts to drainage patterns or soil stability in the locality, impact future use or redevelopment of adjoining land, impact the quality of the fill or soil to be excavated, impact development and likely amenity of adjoining properties, disturb relics or negatively impact any waterway, drinking catchment area or environmentally sensitive area.

The application included a Geotechnical Investigation Report and erosion and sediment control plan which details how earthworks would be managed during construction. Subject to the recommended conditions of consent relating to erosion and sediment control, the application is considered consistent with the requirements of this clause.

Clause 7.3 – Flood Planning

The objectives of this clause are to minimise flood risk to life and property and avoid significant adverse impacts on flood behaviour and the environment, while allowing development on land that is compatible with the flood hazard.

The western half of the subject site, including approved Lot 5 under DA 16-2018-789-1, is located within flood prone land including high hazard storage, low hazard storage, low hazard fringe, high hazard floodway. However, the area subject to development under this application is located to the east of the flood hazard and not identified on flood prone land. Furthermore, the development will

not impact the drainage patterns or flood behaviour of the flood prone land. On this basis, the proposal is considered consistent with the requirements of this clause.

Clause 7.4 Airspace operations

The objective of this clause is to ensure that the operation of the RAAF Base Williamtown is not compromised by proposed development that penetrates the Limitation or Operations Surface.

The Defence Height Trigger Map for RAAF Base Williamtown identifies the height constraint for the subject land as “*Structures higher than 45m require assessment.*” Based on the height details provided within the application documentation, the proposed structures will not infringe the Obstacle Limitations Surface (OLS) for RAAF Base Williamtown. Accordingly, it is considered that the proposal is consistent with the requirements of this clause.

Clause 7.6 Essential services

This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.

Hunter Water Corporation (HWC) issued a notice of formal requirements for the proposed development in July 2019. The notice confirms connection to reticulated water and sewer is available at the subject site. Electricity is available for connection and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application. Conditions will be included on the consent to require that essential services are available prior to the issue of an Occupation Certificate. Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

Clause 7.8 Drinking water catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

The proposed development falls within the Grahamstown Dam Special Area as declared under the *Hunter Water Regulation 2015*. A Stormwater Management Report (ADW Johnson, November 2019) was submitted with the application. The report outlined measures for the treatment of water and waste water so as to not impact on quality and quantity of water entering drinking water storages.

The application was referred to Hunter Water Corporation (HWC) for comment in accordance with Section 51 of the *Hunter Water Act 1991* (Attachment 6). In response, HWC noted that the development could achieve neutral or beneficial effect (NorBE) on water quality and Council's water quality stripping targets. HWC made no objection in relation to the proposal, subject to Council's consideration of the adequacy of the proposed gross pollutant traps and filters used in the applicants modelling. In this regard, Council's development engineers assessed the gross pollutant traps and filters as being adequate for the proposed development.

6.1.3.2 Section 4.15(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No.55)*. The draft SEPP, which was exhibited from 25 January to 13 April 2018, and is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

State Environmental Planning Policy (Koala Habitat Protection) 2019

State Environmental Planning Policy Koala Habitat Protection will replace SEPP 44 – Koala Habitat Protection (SEPP 44). The policy intent of SEPP 44 has been retained in the Koala Habitat Protection SEPP and the former SEPP will be repealed when the new SEPP commences on 1 March 2020.

The implementation of Koala Habitat Protection SEPP 2019 was initiated as a result of community consultation on a proposed amendment to SEPP 44 to change the definitions of koala habitat, list of tree species, list of councils and the development assessment process. Feedback from this consultation informed the creation of the Koala Habitat Protection SEPP 2019.

Consideration has been given to koala habitat protection under the SEPP 44 discussion elsewhere within this report. The proposal does not propose the removal of any vegetation as the area subject to development has already been substantially modified and cleared of vegetation under previous development consents. On this basis, there is no impact expected to occur to koala habitat as a result of the proposal.

6.1.3.3 Section 4.15(1)(a)(ii) any development control plan (and section 7.11 plan)

The following sections of the Port Stephens Development Control Plan 2014 (DCP) are relevant to the proposal:

Chapter A – Part A.12 Development notification

The original application was advertised and notified for a period of 28 days from 8 August 2019 to 4 September 2019. No submissions were received during this period.

Section B – General Controls

Section B1 – Tree Management

The proposal is identified as a non-rural area as defined by *SEPP (Vegetation in non-rural areas) 2017* however, there is no tree removal or pruning proposed as part of the application and the provisions of Section are not applicable the proposed development.

Section B2 – Natural Resources

The proposal does not entail the removal of any vegetation. The site has previously been cleared of vegetation and is highly modified and as such, the site is deemed low risk for containing threatened biodiversity. As such, an ecological report was not required to be submitted with the application.

The site is identified as containing noxious weeds including Alligator weed. A condition of consent has been recommended requiring weed removal and suppression be undertaken in accordance with the requirements for the NSW Biosecurity Act 2015, associated Regulations and NSW Weed Control Handbook.

Chapter B3 – Environmental Management

Acid Sulfate Soils

The subject site is identified as containing Class 5 Acid Sulphate Soils (ASS). The site is not located within 500m of adjacent Class 1, 2, 3 or 4 land nor are works proposed below 5m AHD, therefore an Acid Sulfate Soils Management Plan is not necessary to accompany the application.

Notwithstanding, a condition has been recommended that will require the preparation of an ASS Management Plan in the event that ASS is encountered in the zone of works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Air Quality

The proposed development is not a development type anticipated to produce adverse impacts to air quality or require specific odour control measures. Accordingly, an air quality report was not deemed necessary for the proposed development.

Any potential impacts as a result of the construction phase will be temporary and will be managed and mitigated by appropriate standard measures.

Earthworks

A site regrade plan is supplied with the application. Only minor early earthworks are required for levelling of the building footprint, car parking and stormwater drainage. A condition has been included that fill will consist of Virgin Excavated Natural Material (VENM) or Excavated natural material (ENM) as defined under the *Protection of Environment Operations Act 1997*. Conditions have also been recommended requiring erosion and sediment control measures to be installed prior to the commencement of works.

Noise

The proposal presents the potential for noise generation from the centre-based childcare facility and activities associated with the commercial development.

A Noise Assessment was provided with the application which measures and models the potential noise generation for the operation including sleep disturbance noise emissions. The assessment quantifies potential operational noise emissions pertaining to customer vehicles, delivery/collection vehicles, children playing in the child care facility and mechanical plant associated with the proposed buildings. In addition, the assessment quantifies the noise intrusion from surrounding noise sources to the child care facility.

The assessment has been undertaken in accordance with the following documents:

- Environment Protection Authority (EPA), NSW Noise Policy for Industry (NPI) 2017;
- Association of Australian Acoustical Consultants (AAAC), Guideline for Child Care Centre Acoustic Assessment (GCCCAA);
- Australian Standard AS 1055:2018 - Acoustics - Description and measurement of environmental noise - General Procedures; and

- International Standard ISO 9613:1993 - Acoustics - Attenuation of sound during propagation outdoors.

The assessment demonstrates that the cumulative emissions from the project would satisfy the relevant criteria at all receivers subject to the implementation of noise attenuation measures subject to the implementation of construction mitigation measures and permanent erection of 2m high acoustic fencing along the southern and eastern boundaries of the centre-based childcare facility. Conditions of consent have been recommended requiring the implementation of the recommendations made in the noise assessment and the construction and ongoing maintenance of acoustic fencing. On this basis, the proposal is considered consistent with the requirements of Chapter B3.

Chapter B4 – Drainage and water quality

A stormwater management plan was submitted with the application and includes adequate water quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been recommended requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

Chapter B5 – Flooding

The western half of the subject site, including approved Lot 5 under DA 16-2018-789-1, is located within flood prone land including high hazard storage, low hazard storage, low hazard fringe, high hazard floodway. However, the area subject to development, located to the east of this area is not flood prone land.

Chapter B6 – Essential services

HWC issued a notice of formal requirements for the proposed development in July 2019. The notice confirms connection to reticulated water and sewer is available at the subject site. Electricity is available for connection and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application in accordance with Councils policy. Further details on essential services is provided under Clause 7.6 of this report. Conditions have been recommended to require that essential services are available prior to the issue of an Occupation Certificate.

Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

Chapter B7 – Williamtown RAAF Base – Aircraft Noise and Safety Bird Strike

The development site is located within the Bird Strike Group B zone under the RAAF Base Williamtown Constraints Map. The development does not constitute any of the development types to be avoided within 3km of the airport runway. Despite this, notice to the Department of Defence (DoD) is required in accordance with the DCP provisions. In response, DoD made reference to advice issued previously for development on the subject lot under DA 16-2019-284-1 for an office premises. The advice included recommended conditions relating to storage of organic waste which have been incorporated within the recommended conditions of consent.

Chapter B8 - Heritage

The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance. The site is not listed as locally significant under Schedule 5 of the *PSLEP 2013* or State Heritage register. An AHIMS search did not reveal any Aboriginal sites on or in proximity to the subject site. The site has previously been subject to previous disturbance from its historical land use as an orchard and associated residential use. Further detail on heritage matters has been assessed in the preceding sections of this report against Clause 5.10 of the LEP.

Chapter B9 – Road network and parking

Traffic Impacts

The site is located off Medowie Road, which is a regional road providing primary connection between Medowie and the external road network including the Pacific Highway (to the north), Richardson Road (to the south), and Nelson Bay Road (to the south) for connection to Newcastle Airport. Access to the site is proposed via Peppertree Road to the north and Muir Street to the west of the site, which link the site to Medowie Road.

A Traffic Impact Assessment (TIA) was provided with the application. The TIA details the traffic implications of the proposed mixed-use development including the predicted traffic generation and its impact on existing road and intersection capacities. Following review of the TIA by Council's traffic engineer, it was identified that the existing intersection arrangement of Medowie Road and Muir Street would not adequately cater for the additional traffic movements predicted as a result of the development and the proposed food and drinks premises (subject to separate development consent) is added to the site. In response to this matter, the applicant has provided preliminary plans indicating that a channelised right hand turn lane from Medowie Road into Muir Street could be accommodated in the existing road verge.

Subject to a recommended condition for the submission of detailed plans for the required intersection upgrades, it is considered the road network is capable of handling the additional traffic volume generated by the development.

Car parking

The proposed development provides 104 on site car parking spaces, including 6 accessible spaces.

The TIA and a supplementary letter detail the methodology utilised for the provision of car parking. Noting lower order uses have not been nominated for all commercial tenancies, strict adherence with car parking requirements within the DCP is not possible. Peak parking demands would occur across a range of times with some not occurring simultaneously. As such, there is the opportunity for some shared use of parking across the development to cater for the peak demands of each use and cater for any potential overflow parking as required. Using this methodology, the TIA estimates a parking demand of between 88 to 94 spaces.

Given the individual commercial uses have not been identified at this stage and that there is opportunity for cross utilisation between uses, the car parking estimates applied within the TIA and supporting letter are considered an appropriate means of calculating the car parking requirements. On this basis, it is considered that the development provides sufficient on-site car parking in accordance with the requirements of this chapter.

Access

Two way vehicular access is provided via Peppertree Road and Muir Street. Swept turning paths provided with the application demonstrate adequate manoeuvrability within the development and sight distances to and from the proposed access driveways will exceed minimum requirements. The development incorporates pedestrian crossings with delineated line markings within the car park to separate pedestrians from traffic. The child care centre car parking is located immediately adjacent the centre and entrances to reduce walking distances through the car park and enhance pedestrian safety.

Council's Traffic Engineer reviewed the proposal and supporting information and raised no objection with regard to access arrangements. A condition has been recommended requiring detailed plans of internal roads are provided prior to issue of the Subdivision Works Certificate.

Chapter B10 – Social Impact

The proposal is not a development type considered to have a significant social impact, therefore a social impact assessment is not necessary to accompany the application. Notwithstanding, the proposal is anticipated to have an ongoing positive social and economic impact on the local area as well as the broader community as the provision of services and employment opportunities.

Chapter C1 – Subdivision

C1.A Block and Street layout

The proposal does not incorporate local streets to be dedicated to the roads authority and includes internal access roads only. Notwithstanding, the proposed lot includes block dimensions (within internal private roads) of an appropriate depth and length which are well connected to the street network via internal private roads. The internal access roads are adequate to accommodate movements of service and emergency service vehicles and the layout enables each lot to front a street. Driveways and foot paths are proposed to form part of the subdivision works, ensuring each lot has adequate provision of infrastructure. The layout is generally consistent with the requirements of Chapter C1.A.

A condition of consent has been recommended for the provision of detailed civil engineering plans including indicating roads, accessways, pavement design, street lighting, details of line-marking, traffic management, to be prepared in accordance with the approved plans and Council's Infrastructure Specifications.

C1.B Lot size and dimensions

The site is not subject to a minimum lot size allocated on the lot size map under the LEP, however they are considered of an appropriate size and scale to enable a mix of retail, business, entertainment and community uses, and specialised retail premises, in line with the B2 zone objectives.

C1.E Infrastructure

The proposal does not incorporate local streets to be dedicated to the roads authority and includes internal access roads only. Notwithstanding, the proposal includes the necessary infrastructure to be contained within private lots.

Public utilities, including water, sewer and electricity are available for connection and evidence of connection is required prior to the issue of a Subdivision Certificate. A condition of consent has been recommended for the provision of detailed civil engineering plans for the provision of infrastructure

including drainage, roads, accessways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal. These plans are required to be prepared in accordance with the approved plans and Council's Infrastructure Specifications.

C1.F Public Scale Drainage

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The submitted plan demonstrates each lot is capable of gravity drainage to the public system. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included requiring the provision of detailed stormwater plans, prior to the issue of a Construction Certificate.

Chapter C2 – Commercial

Chapter C2 relates to those aspects of the development defined as Commercial a commercial premises, including the 776m² commercial premises on proposed Lot 2 and 1,285m² multi-tenancy building comprising commercial uses and a retail premises (pharmacy).

C2.A Height

The subject site is subject to a maximum height limit of 8m under the Port Stephens Local Environmental Plan 2013. All structures as part of the development include a maximum height of 7.5m which is compliant with this Clause.

The proposed commercial buildings include a ground floor to ceiling height of a minimum of 3.5m and first floor to ceiling height of a minimum of 3m. The finished ground level of commercial buildings is over 100mm above the adjacent footpath levels. The proposal therefore meets the requirements of this chapter.

C2.B Site Frontage and Setbacks

The site has frontage to two public roads, being Muir Street to the north and Pepper Tree Road to the west. The frontage to Muir Street includes a 5.5m setback to the side of the commercial building and 4.2m setback to the car park which is in excess of the 0m front setback control stipulated within the DCP. Despite this, the variation is considered acceptable in this instance given the proposed building adjoins residential land to the east with an approved multi-dwelling housing development that includes a 4.5m setback to Muir Street. The proposed setback provides a more appropriate transition with respect to existing development and approved applications and therefore maintains the objective of providing continuity and consistency to the public domain. Furthermore, the proposed setback enables landscape screening to be incorporated into the design, providing visual screening of car parking areas.

Frontage to Peppertree Road, includes the proposed medical centre, pharmacy and commercial premises. The front setback to the building at this location is 3.3m, which is in excess of the zero front setback control stipulated within the DCP. Despite this, the variation is considered acceptable in this instance as the development is consistent with existing and approved development in the locality, thereby providing continuity and consistency to the public domain and streetscape. In addition, the proposal incorporates an active street frontage with articulated façade elements and awnings which presents an appropriate interface with the street and maintains the objectives of Section C2.B.

Due to the dual frontage of the site to Pepper Tree Road and Muir Street, side boundaries are to the east (residential) and south (Woolworths). The eastern setback adjoins residential land and includes a setback of 3m, in excess of the zero setback control. The variation is considered suitable in this instance given the land neighbours a residential land use which does not hold a continuous activated street frontage. The southern side includes a setback of 3.6m, in excess of the zero setback control. The variation is considered acceptable given the boundary adjoins the existing Woolworths supermarket loading dock/vehicle manoeuvring area, which does not represent an activated or continuous street frontage. The 3.6m setback provides a suitable buffer between the loading dock activities and commercial use of the site.

C2.C Building Form and Massing

Given the close proximity to the adjoining residential land use, consideration has been given to the maintenance of residential amenity. To address this, the applicant was requested to provide additional information to address visual impacts to adjoining residential land by way of the bulk and scale of the development. In response, amended plans were received incorporating improved articulation of the buildings eastern façade, including recessed built elements, the creation of a stepped interest in the roof form, along with changes to the landscaping treatment in this area to minimise the massing of the building and soften its impact on the residential interface.

Overall, the building mass and scale of the proposed development, inclusive of the two commercial buildings and centre-based childcare facility is considered appropriate with respect to existing development within the locality and neighbouring land uses. The building mass would not result in loss of amenity to adjacent properties or the public domain.

C2.D Facades

The proposed buildings include articulated façade elements and a materials and colour schedule that complement the existing built form within the locality. The site is not located within an area with active street frontages, as the existing developments consist predominantly of standalone commercial buildings with car parking located in the front and side setbacks. Notwithstanding, the proposal incorporates an active street frontage to Peppertree Road where the site fronts the existing Coles supermarket, including an articulated façade with over 50% window coverage which provides positive contribution to public domain safety via enhanced passive surveillance.

The development of the site for the purposes of a mixed use commercial development has been designed with respect to Crime Prevention through Environmental Design (CPTED) principles, as demonstrated within the CPTED Report submitted with the application. The proposal incorporates appropriate night lighting, car park design, site and building layout and landscaping as well as security devices such as CCTV cameras to assist in crime deterrence and prevention. As such, the design is considered to be consistent with the Department of Planning and Environment (former Department of Urban Affairs and Planning) Crime Prevention and the Assessment of Development Applications, 2001.

The proposal includes an extension to the public footpath on Peppertree Road across the frontage of the development site along Peppertree Road and Muir Street.

C2.E Awnings

The proposal incorporates new awnings attached to the commercial tenancies located on Peppertree Road, noting there are currently no existing awnings on the streetscape. The proposed awning is 3.28m in width, with under awning height being approximately 4m. The 4m height exceeds

the maximum 3.6m under awning height DCP control, however, the position of the awning has been driven by the concrete formwork of the upper level, which is level with the carpark central to the site. Furthermore, in this instance, the variation would not result in any adverse visual impacts or inconsistency with the existing streetscape given there are no existing awnings or activated street frontages in the area.

C2.F Building Entries

The proposed development is located on the corner of Peppertree Road and Muir Street. Entry to the site is provided through a combined ingress/ egress point on each frontage. Landscaping, siting, and building orientation provides easily recognisable entry points to the site. Entrances to buildings onsite will be easily visible from the car parking area given on-site building separations, landscaping, driveway design, and levelled pedestrian only areas.

Access to the site from Peppertree Road is located behind the property boundary so as not to obstruct pedestrian footpaths in the public domain.

C2.G Building Facilities and Services

Plant equipment, storage areas, communication structures and servicing areas are located at the rear of buildings or screened from view from streets, parks and other public spaces.

The proposal includes the provision of public toilets and a condition of consent has been recommended requiring that each tenancy provide at least one unisex toilet facility be made accessible to the public.

C2.H Public Art

The proposal is for a commercial development with a capital investment over \$2 million with frontage to the public domain. Accordingly, the development must incorporate public art in accordance with Council's Public Art Policy and Guidelines for the approval and installation of public art in Port Stephens.

Two public art installation locations have been designated on the site in consultation with Council's Community Development Section. The two locations include space within the landscaping area adjacent to the driveway entry from Peppertree Road and in the central section of the development, where internal access roads meet. A condition of consent has been recommended requiring final public art approval be obtained from Council prior to the issue of a Subdivision Works Certificate.

C2.J Landscaping

The proposed landscaping includes boundary screen plantings as well as internal amenity planting within the central car park, representing approximately 1,262m² of total landscaped area (10% of the site area).

The landscape plan incorporates a range of large and medium sized trees as feature trees and for car park shading. Tall screen shrubs are incorporated on boundaries and mass planted ground covers and border planting throughout the site to soften the built form when viewed from the street and neighbouring properties. Details of structural soil have been included on the landscaping plan to ensure car park shade trees reach a mature height.

The proposed landscaping plan has been reviewed by Council's Vegetation Management Officer and has found the plan to be consistent with the requirements of Section C2.J.

Port Stephens Development Contribution Plan

The application attracts Section 7.12 Contributions pursuant to the *Environmental Planning and Assessment Act 1979* and the Port Stephens Development Contributions Plan. A condition has been included that a monetary contribution is to be paid to Council, pursuant to section 7.12 of the *EP&A Act* and the Port Stephens Council Fixed Development Contributions Plan, prior to release of the Construction Certificate.

6.1.3.4 Section 4.15(1)(a)(iia) Planning agreements

No planning agreements are relevant to the proposal.

6.1.3.5 Section 4.15(1)(a)(iv) the regulations (and other plans and policies)

Medowie Planning Strategy

In 2016, Council adopted the Medowie Planning Strategy. The Medowie Planning strategy provides local direction for land use planning and sustainable growth within Medowie over the 20-year period from 2016 - 2036. It forecasts a maximum growth scenario of 17,500 people by the year 2036 (from 10,300 people in 2016). The area is expected to accommodate 2,400 new dwellings in residential release areas and additional 180 in rural residential release areas. Approximately 9.0 hectares of area for general commercial rezoning is identified. The site subject to this application is identified as located within the Medowie commercial precinct under the Medowie Town Centre Masterplan and identified for future commercial development.

6.1.3.6 Section 4.15(1)(a)(v) Coastal management plan

No Coastal Management Plan applies to the site or the proposed development.

6.1.3.7 Section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Built Environment

The proposal represents a contemporary design and built form of an appropriate height, scale, and bulk suitable within the Medowie Town Centre, whilst respecting the amenity of adjoining residential land. Signage is integrated within the built form to minimise visual impacts and achieve compatibility with the existing and future desired character of the locality.

The incorporation of good quality landscaping, including boundary screen plantings as well as internal amenity planting, further enhances the overall visual appearance of the development and further protects the amenity of nearby residential land.

On this basis, the proposal is considered to positively contribute to the built environment.

Natural Environment

The environmental value of the site is low due to the previous clearing undertaken on the site and assessment of this application has not identified any significant environmental impacts as a result of the proposal. The development incorporates a suitable stormwater management plan and water

quality devices in accordance with Council's infrastructure specification and conditions have been recommended to manage any environmental impacts associated with the construction of the development.

Social and Economic Impact

The proposed development makes good use of vacant land and will have a positive social and economic impact through the provision of valuable services to the area which assist in meeting the daily to day needs of surrounding residents, workers, and visitors. The proposal will generate direct employment opportunities during construction and ongoing operation with flow on employment multipliers benefitting the local community.

6.1.3.8 *Section 4.15(1)(c) the suitability of the site for the development*

The site is highly suitable for commercial development, being land identified in the Medowie Planning Strategy as intended for future commercial use and forming part of the envisaged Medowie Commercial Precinct. Further commercial development in this location is considered essential to ensuring adequate services are available to meet the day to day needs of the growing Medowie population.

Consideration has been given to potential amenity impacts to adjoining residential land and have been appropriately managed through sympathetic building design and landscape screening. The development site has previously been cleared of vegetation and the assessment has not identified any significant environmental impacts as a result of the proposal.

Based on this assessment, the site is suitable to accommodate the proposal in its current form.

6.1.3.9 *Section 4.15(1)(d) any submissions made in accordance with this act or the regulations*

The proposal was exhibited for a period of 28 days from 8 August 2019 to 5 September 2019 in accordance with the *EP&A Act*, *EP&A Regulations* and Section A of the DCP. Council received no submissions in relation to the development during that time.

6.1.3.10 *Section 4.15 (1)(e) the public interest*

Matters pertaining to the public interest have been discussed within this report with approval of the application is considered to be in the public interest. The development does not have any significant adverse impacts on the built or natural environment, and has positive social and economic impacts.

6.1.3.11 *Section 7.12 Contributions*

A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Council Fixed Local Infrastructure Contributions Plan, related to the Capital Investment Value (CIV) of the development. Accordingly, a condition has been recommended requiring monetary contribution in accordance with Section 7.12.

7. CONCLUSION

It is recommended that the Hunter and Central Coast Regional Planning Panel, as the consent authority, approve development consent to 16-2019-445-1 (2019HCC-4) for a commercial premises (multiple-tenancies), medical centre, retail premises (pharmacy), centre-based childcare facility (126

place), site works, civil works, signage, landscaping and one into four lot Torrens title subdivision at 795 Medowie Road, Medowie 2318 pursuant to Section 4.16 of the *EP&A Act* subject to the conditions in **Attachment 3**.

Signed (Assessing Officer)



Dylan Mitchell
Senior Development Planner

Date: 4/03/2020

Reviewed (Supervising Officer)



Ryan Falkenmire
A/ Planning and Developer Relations Coordinator

Date: 4/03/2020

Authorised for submission to HCCRPP



Rean Lourens
A/ Manager Development Assessment & Compliance

Date: 4/03/2020