



PLANNING PROPOSAL

Draft Amendment to Draft Lake Macquarie LEP 2014 (Birkwood Close) (Previously: Amendment No.80 to Lake Macquarie LEP 2004, 5 Birkwood Close, Charlestown)

Local Government area:	Lake Macquarie City
Name of Draft LEP:	Draft Lake Macquarie Local Environmental Plan 2014 (5 Birkwood Close, Charlestown)
Subject Land:	Lot 1943 DP 704476 (5) Birkwood Close Charlestown
Landowner:	Trustees of the Roman Catholic Church for the Diocese of Maitland - Newcastle
Applicant:	City Plan Services on behalf of the landowner
Maps:	Appendix 1 – Locality Map Appendix 2 – Current LMLEP 2004 Zoning and Aerial Photo Appendix 3 – Proposed zoning Draft LMLEP 2014 Appendix 4 – Proposed Height of Building Map Appendix 5 – Proposed Lot Size Map Appendix 6 – Preliminary Concept Plan
Attachments:	Attachment 1 – Justification of inconsistency – Ministerial Direction 6.2 Reserving Land for Public Purpose Attachment 2 – Concurrence letter from DoPE – Ministerial Directions 3.2 and 6.2

Part 1 – Objectives or Intended Outcome

The objective or intended outcome of this Planning Proposal (PP) is to amend Draft *Lake Macquarie Local Environmental Plan 2014 (Draft LMLEP 2014)* by rezoning 1.532 hectares of land from Public Open Space to R2 Low Density Residential and E2 Environmental Management (Secondary) to facilitate orderly and efficient development of the land. It is intended for the site, Lot 1943 DP 704476, 5 Birkwood Close, Charlestown to be developed for residential and conservation uses. It is anticipated that the rezoning could yield up to 5 to 7 standard sized residential lots while retaining the school's playing field.

The site is currently privately owned, comprising of a playing field utilised by the adjacent school, two small areas of vegetation and a cleared grassy area. The location of the site in the context of the Lake Macquarie Local Government Area is shown in Appendix 1.

It should be noted that the current zoning incorrectly implies that the land is in public ownership, when in fact the Trustees of the Roman Catholic Church own the land.

Part 2 – Explanation of Provisions

The Planning Proposal will result in the following amendments to the Draft Lake Macquarie LEP 2014 (Council's Standard Instrument LEP):

Amendment Applies to:	Explanation of Provision
Map	Rezone the site from current open space use to R2 Low Density Residential and E2 Environmental Management (Secondary) (Draft LMLEP2014). (Refer to Map Sheet in Appendix 3).
Lot Size Map	Minimum lot sizes would correspond to proposed zoning as follows: R2 – 450m ² E2 – 40ha (Refer to Map Sheet in Appendix 7).
Height of Buildings Map	Maximum building heights would correspond to proposed zoning as follows: R2 – 8.5m E2 – 5.5m (Refer to Map Sheet in Appendix 6).

Part 3 – Justification

A. NEED FOR THE PLANNING PROPOSAL

1. Is the Planning Proposal a result of any strategic study or report?

No, the Planning Proposal is not the result of a strategic study or report. The zoning is consistent with the objectives of both the *Lower Hunter Regional Strategy (LHRS)* and *Lifestyle 2030*. The proposal will allow the provision of land for residential and conservation uses within an established residential area with good accessibility to existing services and facilities. The subject site is within walking distance of a local neighbourhood centre and public transport services along the Pacific Highway linking to Charlestown Regional Centre to the north.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposal seeks to rezone the privately owned land from its current open space use to R2 Low Density Residential zone to develop housing for seniors, socially disadvantaged, such as those with a mental or physical disabilities, or low-income earners. Rezoning the land is considered the most suitable and transparent way of achieving the objectives of this proposal.

The current draft RE1 Open Space zone for the site is not the most appropriate zone as the objectives of this zone are to provide community owned land or land intended to be owned by the community to be suitable for the passive and active recreation needs. The land is privately owned and current land uses do not reflect the objectives of the Public Open Space zone.

The site is privately owned by the Roman Catholic Church for the Diocese of Maitland-Newcastle. This single ownership of a relatively large sized site will allow redevelopment to occur in the short to medium term.

The east portion of the subject site is surplus to the school's requirements and Council does not require open space at this location (See Attachment 1).

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The Lower Hunter Regional Strategy (LHRS) identifies the population and employment capacity targets for the Lower Hunter region over the next 25 years and actions to ensure the ongoing growth and prosperity of the region.

The Proposal is consistent with the LHRS neighbourhood planning principles, such as locating housing close to town centres with a range of shops and services, providing a wide range of housing choices, and promoting conservation lands in-and-around development sites to help protect biodiversity.

The strategy focuses on concentrating housing more people in centres. The LHRS has identified Charlestown as a Major Regional Centre. The site is located in close proximity and has good accessibility to the Charlestown Major Regional Centre where retail, employment and other services are located. In addition, the Planning Proposal designates an area along the Pacific Highway to the south of Charlestown as a renewal corridor to encourage residential and mixed use development for areas with high frequency public transport networks and in close proximity to centres. The renewal corridor is well serviced by public transport, schools and is in close proximity to employment areas and a local neighbourhood centre.

The LHRS projects that by 2031 a total of 36,000 new dwellings would be developed in Lake Macquarie Local Government Area (LGA). This is over 30% of the projected total of new dwellings in the Lower Hunter. In Lake Macquarie LGA, 21,000 of the new dwellings would be infill (split between 14,000 in centres and corridors and 7,000 dwellings elsewhere in the existing urban area) and 15,000 dwellings would be located in new release areas.

Consequently, rezoning of this land for residential purposes will assist in achieving housing targets outside of a designated major Centre, but within a renewal corridor.

4. [Is the Planning Proposal consistent with the local council's Community Strategic Plan or other local strategic plan?](#)

Lifestyle 2030 Strategy

Lifestyle 2030 provides long-term direction for the development of the City of Lake Macquarie and describes Council's high level policies for managing private and public development.

The Planning Proposal is consistent with Lifestyle 2030 Strategy's overall Strategic Directions. These include:

- *A Well Designed, Adaptable and Liveable City* - The Planning Proposal will allow the provision of land for residential and conservation uses within an established residential area with good accessibility to existing services and facilities. The site is within walking distance of a local neighbourhood centre and public transport services along the Pacific Highway linking to Charlestown Regional Centre to the north and Belmont Town Centre to the south.

The site is located close to a major regional centre. Redevelopment of the site will be an efficient and orderly redevelopment of a parcel of land that is surplus to the school's recreation needs.

- *A City Responsive to the Wellbeing of its Residents* – Following rezoning, part of the land is proposed to be used to provide affordable housing for disabled or socially disadvantaged people allowing equal life chances and equal opportunities within the LGA. Lake Macquarie is currently experiencing an aging population and the rezoning and proposed development will respond to this demographic change.
- *A Well Serviced and Equitable City* - The subject land is located in an existing urban area in close proximity to existing infrastructure and services. It is located in an already established area and within close proximity to the Charlestown sub-regional centre. The proposal would allow for comfortable travel as a pedestrian, cyclist or by public or private transport. In addition, the subject land is readily accessible to existing major road networks such as the Pacific Highway or the Newcastle Inner City bypass as well as frequent public transport services, reducing the reliance of private vehicles and reducing traffic congestion.

The only vehicular access to the site is via Birkwood Close. This cul de sac would need to be extended to provide vehicular access to the site. Pedestrian links to the site are available from Kulai Street via two pathways and a pathway to Schroder Avenue.

Rezoning of the subject site for residential uses will assist Council to achieve these aims and integrate with existing housing surrounding the site as well as the adjoining open space corridor whilst creating its own identity as a pleasant and safe environment for future residents and land users.

A review of Lifestyle 2020 in 2012 found that projections relating to population growth and infill of the town centre Charlestown would not likely be met before 2020 without a significant increase in the rate of attached housing development. This Planning Proposal to rezone a parcel of land with an area of 1.53 hectares will assist to provide additional land within an established residential precinct for residential uses.

This Planning Proposal is also within an area identified in LS2030 as the ‘East Lake Intensification Corridor’. It is envisaged that future development within this corridor will be within existing urban zoned lands, close to centres and well serviced by public transport routes. The subject site meets all these criteria.

Lake Macquarie Community Plan 2008-2018

The proposal meets relevant objectives of the Lake Macquarie Community Plan 2008-2018. This Plan provides an overview of five key focus areas for action and sets out broadly - based short, medium, and long-term objectives, directions, and progress indicators.

Objectives the proposal satisfies include:

The City’s economy prospers, under managed growth that enhances the quality of life while balancing employment and environmental objectives.

The Planning Proposal will satisfy this objective, as the rezoning of the site will allow for increased housing opportunities within an established urban area that is well serviced with community facilities and is in close proximity and accessible to neighbourhood, town and regional centres as well as employment opportunities.

Advocate for and develop opportunities that will ensure all residents have equal opportunity to participate in the economic and social life of the community.

The Planning Proposal will satisfy this objective as the rezoning can facilitate the development of housing for the sociably disadvantaged on part of the site. The Proposal will also facilitate housing that can deliver equal life chances and equal opportunities within the LGA.

5. Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with applicable state environmental planning policies. Refer to the table below for further information.

SEPP	Relevance	Implications	Consistent
SEPP 19 – Bushland in Urban Areas	This SEPP aims to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared.	Whilst the subject site is zoned for open space purposes, the majority of the site is used as a sporting field for the adjacent school. Any future development of the site will take into consideration the location of the existing vegetation upon the site and bushland will be retained wherever possible to preserve its aesthetic value.	Yes

SEPP	Relevance	Implications	Consistent
		<p>A Flora and Fauna assessment was undertaken to determine the significance of vegetation on the site. The study confirms that the aims of the policy are met, such as identifying any endangered species and their habitats and preserving plant communities due to their scenic values and visual identity.</p> <p>Following the results of the Flora and Fauna Assessment, the boundary lines for the rezoning have been refined with sensitive areas of the site conserved.</p> <p>The Biodiversity Study conducted by Eco Logical Australia concluded that the impact of the development on biodiversity including the Hollow Bearing Trees on the area proposed for residential is not significant. Council staff have recommended the retention of key habitat trees, which will be addressed at development application stage.</p> <p>It is considered the proposal has significant social benefits for the community and that on balance outweigh the value of the existing bushland. As the housing is proposed to be for the socially disadvantaged, the rezoning will allow for an increase in the variety and choice of housing types to accommodate for those with a physical or mental disability or persons with a low income.</p> <p>The provision of this housing type is currently lacking in the LGA. The site is in a convenient infill location within close proximity to neighbourhood, town and regional centers.</p>	
SEPP (Building Sustainability Index: BASIX)	The aim of this policy is to ensure consistency in the implementation of BASIX throughout the State by overriding competing provisions in other environmental planning instruments and development control plans.	Any new housing development proposal for the site would need to have regard to this SEPP during the development phase.	Yes
SEPP 55 – Remediation of Land	Establishes planning controls and provisions for the remediation of contaminated land.	A Phase 1 Contamination Assessment Report was completed by GHD and concluded <i>“the property has a low potential for contamination</i>	Yes

SEPP	Relevance	Implications	Consistent
		<p><i>under residential land use for the unfilled area, with a higher risk within the filled areas and any areas of dumped material.</i>” The report has identified small areas of fill which together total approximately 0.1 ha that may be contaminated from materials such as refrigerator and car parts.</p> <p>Council’s Principal Environmental Officer has reviewed the Contamination Assessment Report and stated that a Phase Two Assessment will be required at any development application Stage to determine the extent of contamination.</p>	
SEPP (Housing for Seniors or People with a Disability) 2004	This SEPP aims to encourage the development of high quality accommodation for our aging population and for people who have disabilities- housing that is in keeping with the local neighbourhood.	The proposal will allow the development of this site for this type of housing that is in keeping with the local character.	Yes
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	This Policy aims to provide for the proper management and development of mineral, petroleum, and extractive material resources for the social and economic welfare of the State. The Policy establishes appropriate planning controls to encourage ecologically sustainable development.	This proposal will not prevent mining for resources within the surrounding areas as there are no mines in close proximity to the site.	Yes
SEPP (Infrastructure) 2007	This SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW, along with providing for consultation with relevant public authorities during the assessment process. The SEPP supports greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.	This Planning Proposal does not impact on the operation of this SEPP.	Yes
SEPP (Exempt and Complying Development Codes)	This SEPP seeks to provide quick approvals for low impact development	Future development of the site will be subject to this SEPP.	Yes

SEPP	Relevance	Implications	Consistent
SEPP (Affordable Rental Housing) 2009	This SEPP establishes a consistent planning regime for the provision of affordable rental housing.	This SEPP will provide the opportunity for the site to be developed for affordable housing once the site is rezoned for residential purposes.	Yes
SEPP 36 – Manufactured Home Estates	This SEPP aims to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements.	Under Schedule 2, Clause 6 of the SEPP, the open space zone is excluded in respect to Manufactured Home Estates. Therefore, this SEPP does not apply to this Planning Proposal.	Yes

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Proposal is consistent with the majority of Ministerial Directions except Direction 6.2 – Rezoning Land for Public Purposes and Direction 3.2 – Caravan Parks and Manufactured Home Estates as outlined below.

Ministerial Direction	Relevance	Consistency / Comment
2.1 – Environmental Protection Zones	The direction requires that a draft LEP contain provisions to facilitate the protection of environmentally sensitive land.	Consistent: The Proposal does not seek to change land zoned for environmental protection. Following the results of the Flora and Fauna Assessment, the Proposal seeks to protect the southern portion of the site and proposes to rezone the identified land to E2 Environmental Management (Secondary) under Draft LMLEP 2014. The boundary lines for the rezoning have been refined with sensitive areas of the site conserved.
2.3 – Heritage Conservation	The direction requires that a draft LEP provide provisions in order to conserve heritage items.	Consistent: There are no known heritage items or places of heritage significance in the vicinity of this site.
2.4 – Recreation Vehicle Areas	The direction restricts a draft LEP from enabling land to be developed for a recreation vehicle area.	Consistent: The Planning Proposal does not seek to enable land to be developed for the purpose of a recreation vehicle.
3.1 – Residential Zones	The direction requires a draft LEP to include provisions that facilitate housing choice, efficient use of infrastructure, and reduce land consumption on the urban fringe.	Consistent: The proposed rezoning of the site for residential zone land uses allows for additional residential land adjacent to existing residential zoned land and thus increasing potential housing supply.

Ministerial Direction	Relevance	Consistency / Comment
3.2 – Caravan Parks and Manufactured Home Estates	The direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	<p>Inconsistent: The Proposal seeks to rezone land from current open space use to R2 Low Density Residential (Draft LMLEP 2014) Caravan parks are permitted within open space zone, but are prohibited in the R2 Low density Residential zone.</p> <p>Justification: The inconsistency is of minor significance. Although the subject land is zoned for (public) Open Space, it is privately owned and used for private purposes (i.e. sporting facilities for an existing private school). As such there is no expectation currently that the land would be available for the purposes of a Caravan Park or Manufactured Home Estate. The Council has received the concurrence letter from the Director General that this inconsistency is of minor significance. Refer to attachment 2.</p>
3.3 – Home Occupations	The direction requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	<p>Consistent: The proposed rezoning will not affect provisions relating to home occupations with the existing provisions being retained with the principal LEP.</p>
3.4 – Integrating Land Use and Transport	The purpose of this Direction is to ensure that development achieves objectives with regard to the improvement of access by walking, public transport and other means that reduce dependence on private car travel. Relevantly, a draft LEP should locate urban zones and include provisions that give effect to listed guidelines and policies.	<p>Consistent: The Planning Proposal is consistent with this Direction as the site is within 450 metres walking distance of the Pacific Highway which is serviced by regular bus services.</p> <p>The site is also within walking distance of a school and a neighbourhood centre which includes to a post office, newsagent, food shops and other services.</p>
4.1 – Acid Sulfate Soils	This direction applies to lands that have a probability of containing acid sulphate soils and to minimise any adverse environmental impacts	<p>Consistent: Council's maps do not show the subject site as containing acid sulphate soils. Therefore the site is not considered to contain a high risk of acid sulphate soils, however detailed testing occurred as part of the rezoning process. A Geotechnical and Phase 1 Site Contamination Assessment was undertaken in September 2013 to review the likelihood of the presence of Acid Sulphate Soils. The results of the study found no evidence of Acid Sulphate Soils identified by a desktop review or soil test results for the site.</p>

Ministerial Direction	Relevance	Consistency / Comment
4.2 – Mine Subsidence and Unstable Land	The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	Consistent: The Mine Subsidence Board has raised no objection to the proposed rezoning. The Board's approval will be required for any proposed subdivision or the erection of improvements at the development application stage.
4.3 – Flood Prone Land	This Direction aims to ensure that development of flood prone land is consistent with the NSW Government Flood Prone Land Policy and the Principles of the Floodplain Development Manual 2005 and to ensure that the provision of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	<p>Consistent: The subject site is not designated as being flood prone. Development of the land for residential purposes with floor height above the 100 year ARI (1%AEP) for habitable rooms is possible.</p> <p>A Flood Study was conducted in September and October 2013 to identify the impact of possible flooding on the site.</p> <p>The study found that the extent of the 100 year ARI flood is wholly outside of the subject site. Any future development contained within the site will not be impacted on by design storms up to and including 100 year ARI. The study also identified that there are no areas of high provisional flood hazard identified within the site for 20 year or 100 year ARI.</p> <p>There are a number of drainage lines through the site, and any future development of the site will need to cater for flows along these drainage paths to ensure that overland flow is adequately addressed and not directed in a manner which impacts on adjoining property owners.</p> <p>The existing surface level of the site achieves the minimum Flood Planning Level (based on 100year ARI flood level plus 500mm freeboard) for the entire site.</p>
4.4 – Planning for Bushfire Protection	This Direction is intended to reduce risk to life and property from bushfire. Any draft LEP needs to have regard for Planning for Bushfire Protection Guidelines.	Consistent: Part of the site is designated as bush fire prone land. However, the site is surrounded by existing development except for immediately to the west where land is designated as parklands with an existing watercourse traversing this area. Further development of the site would be considered as infill development and could be appropriately designed to satisfy bushfire protection guidelines. The Planning Proposal can satisfy this direction. The Rural Fire Service raised no objection to the Planning Proposal.
5.1 – Implementation of Regional Strategies	The direction requires a draft LEP to be consistent with the relevant State strategy that applies to the Local Government Area.	Consistent: The proposal is wholly consistent with the provisions of the LHRS, as discussed throughout this Planning Proposal.

Ministerial Direction	Relevance	Consistency / Comment
6.1 – Approval and Referral Requirements	The direction prevents a draft LEP from requiring concurrence from, or referral to, the Minister or a public authority.	Consistent: The proposal does not include any provisions that would require additional referrals/ concurrence or identify designated development.
6.2 – Rezoning Land for Public Purposes	This Direction aims to facilitate the provision of public facilities by reserving land for a public purpose. A Planning Proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director General of the Department of Planning	<p>Inconsistent: The Planning Proposal seeks to rezone land from current open space use to R2 Low Density Residential zone (Draft LMLEP2014).</p> <p>Justification: The subject land is zoned for a public use, however it is privately owned and used for private purposes (i.e. sporting facilities for an existing private school). Discussions with Council officers indicate that the land is not required for public purposes. The Council has received concurrence from the Director General that this inconsistency is of minor significance. Refer to attachment 2.</p>
6.3 – Site Specific Provisions	This Direction provides guidance with regard to LEPs prepared in order to allow a particular development proposal to proceed.	Consistent: This Planning Proposal does not anticipate the requirement for any additional LEP provisions or standards that do not already exist within Draft LMLEP 2014.

C. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Proposal?

Council's Native Vegetation and Corridors Map depicts the existing vegetation upon the site as "*partially cleared remnant native vegetation*". The site consists of two clusters of vegetation:

1. an embankment of eucalyptus trees on the north-eastern area of the site;
2. at the southern point of the site a cluster of casuarina trees, with undergrowth which has not been maintained consisting of reeds, bamboo, weeds, etc.

As the existing vegetation has been designated as partially cleared remnant native vegetation only and does not constitute a remnant native vegetation corridor, it is not likely that this vegetation significantly contributes to the overall biodiversity of the LGA.

A Flora and Fauna Assessment was undertaken generally in accordance with Council's Biodiversity Planning Policy Guidelines for (LEP) Rezoning Proposals 2012 and Flora and Fauna Assessment Guidelines 2012 in September 2013 to review the ecological values of the site.

A flora survey found a total of 107 flora species present. The survey identified three vegetation communities on site; Coastal plains Smooth-barked Apple Woodland,

Freshwater Typha Wetland and cleared land. No threatened flora species or ecological communities were recorded during the survey.

A fauna survey found 23 fauna species. The majority of fauna was observed in either the main area of remnant bushland as well as along the creek line and wetland area. Species that prefer or tolerate open areas were observed on the oval. Final results determined no threatened fauna species on site.

Key fauna habitats identified on site were hollow bearing trees and Freshwater Typha Wetland. Four hollow bearing trees were identified on site. In total there was one large and four small hollows. An analysis of the fauna habitat concluded that fauna is generally unlikely to be of great importance as the site provides limited value for threatened biodiversity, being small, highly fragmented and with little connectivity.

Under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act), a total of two threatened species and one migratory species listed under the EPBC Act were identified as occurring or potentially occurring within the study area. Impact to these species was not identified as being a controlled action under the EPBC Act and therefore no further assessment was required.

Six threatened species were considered likely to occur within the study area and one ecological endangered community (EEC). An assessment of the EEC and threatened species pursuant to Section 5A of the EP&A Act would be required at the development application stage, however it is considered unlikely that the proposed development would trigger a significant impact. The EEC is the Freshwater Typha Wetland and will be protected by the proposed E2 Environmental Management zone (Secondary) (Draft LMLEP2014).

The Flora and Fauna Assessment also recommended that the areas representing moderate biodiversity value should be retained where practicable, due to the ability of these areas to provide supplementary habitat for potential threatened fauna. This will be assessed at any development application stage.

In summary, the potential impacts of proposed development on biodiversity values on the site are not considered to be significant. The site provides limited value for threatened biodiversity, being small, highly fragmented and with little connectivity. Some valuable habitat resources were recorded for the site and recommendations have been made to retain these values at development application stage.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

Traffic

As previously stated, the Pacific Highway which is designated as a main road is located to the west of the subject site. Access to the Pacific Highway may only be gained to the north of the site due to the existing road network. Vehicular access to the site from the Pacific Highway is available via Hazelton Grove, Kulai Street, Algona Road, Fenton Street and Oxford Street which are all described as being local streets providing access to residential properties. Oxford and Fenton Streets also provide access to a number of community facilities such as a school, child care centres, churches, etc. Alternatively, access is available via Algona and Dudley Streets to the Charlestown Regional Centre.

The only direct vehicular access to the site is via Birkwood Close. This cul de sac would need to be extended to allow vehicular access onto the site. Transport Planning staff advise that in reference to RMS Guide to Traffic Generating Developments, the proposed 5-7 standard sized residential lots will add approximately 30 vehicular movements per day along the local streets. As the surrounding area comprises

detached dwellings only, spare capacity is likely to exist within this road local network with the overall environmental amenity of these roads being retained.

The provision of additional vehicular access points is limited due to an existing watercourse and the open space corridor to the west of the site. The preliminary concept plan attached at Appendix 6 demonstrates a potential vehicular access point to the site from the surrounding local road network. Council's Transport Planning Coordinator has advised that a traffic study at the rezoning stage is not necessary. The impact of any future development on the road network can be assessed at the development application stage.

Pedestrian links to the site are available from Kulai Street via two pathways and a pathway to Schroder Avenue.

Contamination

A Phase 1 Site Contamination Assessment was undertaken in September 2013 by GHD to assess the potential for contamination at the site and concluded *"the property has a low potential for contamination under residential land use for the unfilled area, with a higher risk within the filled areas and any areas of dumped material."* The report has identified small areas of fill which together total approximately 0.1 ha that may be partially contaminated from the fill imported from construction of Charlestown Square shopping centre and may contain fridges and car bodies but this has not been verified or noted during the site investigation. No evidence of potential asbestos containing materials or slag from Pasminco were noted during the investigation.

Council's Principal Environmental Officer has reviewed the Contamination Assessment Report and stated that a Phase Two Assessment will be required at any development application Stage to determine the extent of contamination.

Hydrology, Water Quality and Flooding

A Flood Study was conducted in September and October 2013 to identify the impact of possible flooding on the site.

The study found that the extent of the 100 year ARI flood is wholly outside of the subject site. Any future development contained within the site will not be impacted on by design storms up to and including 100 year ARI. The study also identified that there are no areas of high provisional flood hazard identified within the site for 20 year or 100 year ARI.

There are a number of drainage lines through the site, and any future development of the site will need to cater for flows along these drainage paths to ensure that overland flow is adequately addressed and not directed in a manner which impacts on adjoining property owners.

The existing surface level of the site achieves the minimum Flood Planning Level (based on 100year ARI flood level plus 500mm freeboard) for the entire site.

Geotechnical

A Geotechnical Assessment was undertaken in September 2013 to provide a preliminary understanding of subsurface conditions of the site and to identify potential constraints on the proposed rezoning land use.

No slope instability was observed and soil salinity is not anticipated to be an issue for the site. It is anticipated that the site does not contain any significant areas of soft compressional soil or any acid sulphate soils.

The subject site is located within a mine subsidence district and the Mine Subsidence Board's approval will be required for any proposed subdivision or the erection of improvements at the development application stage.

Previously filled areas of the site are likely to be compacted and compressed of variable quality materials. Such fill can have variable engineering properties leading to differential settlements and poor drainage that would affect structure and pavements. Further geotechnical characterisation of the fill will be required at the development application stage and it is likely that some stripping and re-compaction of the upper portion of the fill will be required to create a suitable ground surface for residential development.

In summary, the site is considered to be suitable for residential land use following further geotechnical investigation and improvement works to the areas containing previous fill at the development application stage.

Visual

Currently the site is vacant and used in association with the school. Development of the site for residential purposes would result in additional built form occupying the site. Consequently, the visual appearance of the site will change. However, appropriate design guidelines can be implemented so as to ensure any future development of the site is of high aesthetic quality and incorporates good urban design principles that enhances the site and locality and minimizes any potential amenity impacts.

Development controls within Council's Draft Development Control Plan (DCP2014) applying to housing and subdivision are considered to be appropriate for this site. The Draft Development Control Plan (DCP2014) will come into effect when the Draft LMLEP2014 is made and comes into effect. Whilst development of the site for residential purposes will change the character of the site, this change is compatible with surrounding residential development and the adjacent school.

Any proposal for the site would be designed to ensure that adequate amenity levels are retained for existing residential properties surrounding the site as demonstrated by the preliminary concept plan attached to this report.

9. How has the Planning Proposal adequately addressed any social and economic effects?

As the plan is to rezone the land from Public Open Space to R1 Low Density Residential and E1 Environmental Management under the Draft LMLEP 2014, there will be a decrease in open space, despite the land being privately owned. The land at present does not reflect the given zone as it is used as a playing field for a private school and is not available for use by the general public.

The Planning Proposal will facilitate residential development within walking distance of a school and a neighbourhood centre providing services such as post office, newsagent, food shops and other services. It is also a 450 metre walk to the Pacific Highway which provides frequent public bus services north to Charlestown and Newcastle, and south to Belmont and Swansea.

Development of the site for residential purposes is likely to result in the creation of a number of new jobs during the construction phase and positive flow on effects to the local community. Any increase in population within the Charlestown Planning District will support existing local centres at Gateshead as well the Charlestown Regional Centre and the Mount Hutton and Belmont Town Centres.

Council's community planner for ageing and disabilities services advises that the location of the subject site is suitable for seniors or those with a mental or physical disability, providing good access public transport, shopping centres and medical facilities. Paved pathway to connect the development with existing paved footpaths leading to the nearby bus stops will be assessed during development application stage.

There are not likely to be any significant social issues as a result of the development, as appropriate measures will be implemented to reduce development impacts on traffic and amenity. Overall, the proposal is anticipated to have a net positive impact on the local community.

Local employment opportunities will be created during the site during the construction phase should the proposal proceed. An increase in housing stock will result in an increase in population within the area.

D. STATE AND COMMONWEALTH INTERESTS

10. Is there adequate public infrastructure for the Planning Proposal?

The Charlestown/Gateshead neighbourhood currently has reticulated water and sewer services as well as gas, electricity and telecommunications services. Hunter Water Corporation has advised that there are water and sewer services available in the neighbourhood. Ausgrid also has advised that there is current electricity infrastructure available in the neighbourhood. The subject site is located 450 metres walk from major shopping centre and in close proximity to public transport.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

NSW Trade and Investment:

NSW Trade and Investment have noted that an adjoining parcel, being Lot 63 DP 718183, is Crown land reserved for Public Recreation (r98042) and Lake Macquarie City Council is the appointed reserve trust manager. Community Planning has reviewed the proposed rezoning and concluded that the proposed rezoning of the land will not have an adverse effect on the adjoining crown reserve Lot 63 DP 718183.

In accordance with the gateway determination, NSW Rural Fire Service and Mine Subsidence Board provided comments on the Planning Proposal.

Rural Fire Service (RFS):

The majority of the site is bushfire prone. However, the RFS notes that there may be limited opportunity for retention of the existing vegetation on the site at the development application stage. Thus, the RFS has raised no objection to the proposed zoning. Any future development of the land must consider and comply with the provisions of Planning for Bush Fire Protection 2006. Furthermore, an appropriate asset protection zone must be provided in relation to the vegetation/bushfire hazard of the west and within the southern part of the subject site. These can be addressed at development application stage.

Mine Subsidence Board (MSB):

The MSB has no objection to the proposed rezoning. The Board's approval will be required for any proposed subdivision or the erection of improvements at the development application stage.

Part 4 – Community Consultation

Exhibition was held for 32 days between 28 January and 28 February 2014 with notice via newspaper advertisement in local newspapers and on the LMCC website's Public Notices and Exhibition page. In addition, letters were mailed to landowners in the vicinity of the subject site, providing them with a description of the site and proposal, details of where and when the Planning Proposal can be inspected, the name and address for a relevant contact at LMCC (i.e. to lodge submissions), and advising them of the last date for submissions.

In total, six public submissions were received. The issues raised and town planning comments thereon are discussed below.

- *Possible reduction in Open Space area*

Concerns have been raised that the proposal will reduce the open space available for the members of the community and students for recreation and add pressure to other recreational land in Charlestown. In addition, concern has been raised that the number of potential residential lots will not be limited to five to seven.

The subject site is in private ownership and comprises approximately 1.5 ha, which St. Mary's High School currently use as open space. The proponent aims to develop approximately 0.6 ha for residential purposes, retain the existing sports field of approximately 0.5 ha for school use and approximately 0.4 ha for environmental management. Given that low density residential development in the city currently achieves approximately eight to fifteen dwellings per hectare, it is anticipated the development of 0.6 ha will achieve five to seven residential lots on the site.

The subject site is located in the Charlestown Contributions Catchment, which has a population of 59,520 and approximately 141 hectares of recreation land, which equates to 2.36 ha of recreational land per 1000 population. The recognised open space standard provision is 2.83 ha/1000 population and thus, there is a shortfall of approximately 27 hectares of recreation land in the Charlestown Catchment. Community Planning is preparing a Draft Recreational and Open Space Plan, which has identified additional suitable land for recreational needs in this locality. The subject site has not been identified for inclusion in the draft plan and Community Planning have advised it is not required.

The objective of the current open space zone is to provide community owned land or land intended to be owned by the community that is suitable for the passive and active recreation needs of the community. However, the subject site is privately owned and Community Planning have advised that Council does not have plans to acquire this land for recreational purpose. In addition, schools nearby the subject site such as Charlestown South Public School and St. Paul's Primary School are both zoned for low density residential development consistent with adjoining zones.

There are concerns that the rezoning of the site will result in a loss of land for children to play or to walk dogs. Council staff have identified several parks located within a 2 km radius of the subject site including Sylvia Grozdanovski Park, Charlestown Park, Windsor Park and Riawena Park. There is also extensive, quality bushland at Awabakal Nature Reserve and Glenrock Nature Reserve which is within a five minute drive from

the subject site. Given the small area to be developed for residential purposes, the private nature of the land and advice that the land has not been included in the draft Recreational and Open Space Plan, it is considered the loss of open space area will not have a significant impact on the supply of open space land in the catchment area.

In addition, concern has been raised that the land was initially sold to the school with the intention of recreational use and should therefore not be rezoned for residential purposes. It is suggested that priority should be given to developing existing zoned residential and undeveloped areas. A review of residential development in Charlestown as part of the preparation of Lifestyle 2030 indicated a shortfall in meeting targets set in the Lower Hunter Regional Strategy. Substantial infill development is required if those targets are to be met and Lifestyle 2030 supports such development. The proposal will only provide a small amount of low density residential development. Such residential development on the subject site is considered to have strategic merit due to its close proximity to the major shopping centre and other facilities with existing infrastructure.

- *Site unsuitable for aged persons and/or people with disability*

Concern has been raised that the subject site is not suitable for residential development for aged people and people with disability due to steep gradients and lack of footpaths and the site is greater than 450m to the local shops. Council's Community Planner for ageing and disabilities services advises that the location of the subject site is suitable for seniors or those with a mental or physical disability, providing good access to public transport, shopping centres and medical facilities. In addition, the subject site is located within 450m walking distance of the Pacific Highway and Gateshead Local Neighbourhood Centre when accessed via Creek Bridge. Paved pathways to connect the development with existing paved footpaths leading to the nearby bus stops will be assessed during the development application stage.

There were also concerns that the proponent intends to use the land for public housing. Under the R2 Low Density Residential zone (Draft LMLEP2014) development of public housing is permissible. However, the proponent has stated that they have no intention to develop public housing. In addition, the provisions of State Environmental Planning Proposal (SEPP) Affordable Rental Housing must be addressed if the proponent intends to develop public housing.

- *Increase in Traffic Congestion*

Concern has been raised that the proposal will increase the traffic congestion and related noises in surrounding areas of the subject site. As the only vehicular access to the site is via Birkwood Close, the cul de sac would need to be extended to allow vehicular access to the site. Transport Planning staff advise that in reference to the RMS Guide to Traffic Generating Development, the proposed five to seven standard sized residential lots will add approximately 30 vehicular movements per day along the local streets. As the surrounding area comprises detached dwellings only, spare capacity does exist within this road local network with the overall environmental amenity of these roads being retained. Council's Transport Planning Coordinator has advised that a traffic study at the rezoning stage is not necessary.

- *Urban runoff and flooding*

Concern has been raised that proposed development in the area will result in an increase in urban runoff and flooding. The Flood Study conducted by Brown Consulting concludes "*The subject site is not designated as being flood prone. Development of the land for residential purposes with floor height above the 100 year ARI (1%AEP) for habitable rooms is possible.*" The Sustainability Department have reviewed the Flood Study and concur with the findings. In addition, any development application will include

a detailed stormwater management plan as required by Council's Draft Development Control Plan 2014 (Draft DCP 2014). The Draft DCP requires stormwater management to protect any close natural waterways and minimize impacts of site runoff. Detailed stormwater design will be required to accompany the development application for proposed development to ensure that 'waterways and vegetation are retained and protected from increased stormwater flows.'

- *Existing vegetation on the site provides important habitat and linkages for wildlife*

Concern has been raised that the existing vegetation on the site provides important linkages for wildlife and future residential development will have negative impact on the environment. The Sustainability Department recognise the southern portion of the subject land has high biodiversity value and the land will be zoned E2 Environmental Management (Draft LMLEP 2014) to protect the area. In addition, the Biodiversity Study conducted by Eco Logical Australia concluded the impact of the development on biodiversity, including the Hollow Bearing Trees, on the area proposed for residential is not significant. Council staff have recommended the retention of key habitat trees, which will be addressed at the development application stage.

- *Proposal conflicts with SEPP 19 – Bushland in Urban Areas*

The general aim of this Policy is to protect and reserve bushland within urban areas because of its value to the community as part of the natural heritage, aesthetic value and its value as a recreational, educational and scientific resource. The economic and social benefits of rezoning land need to be weighed up against loss of bushland. However, the rezoning will allow for an increase in the variety and choice of housing types with close proximity to Charlestown Shopping Centre. The amount of vegetation that will be potentially lost covers approximately 0.2 hectares and key habitat trees will be retained. It is considered that the proposal will provide social and economic benefits for the community that will outweigh the value of the existing vegetation.

- *Inadequate survey of the threatened species*

Concern has been raised that the threatened species, particularly the *Tetratheca juncea* (Black Eyed Susan), were not adequately surveyed. It is mentioned in the submission that the "Survey was carried out 16 September. Council guidelines required 3 surveys 6 weeks apart or under the draft guidelines a single survey during peak flowering period, the peak flowering period for this species is not September." However, the Environment Protection and Biodiversity Conservation Act 1999 referral guidelines for the *T. juncea*, indicate that the peak time for this shrub to flower is in September. The *T. juncea* survey was conducted in accordance with Council's Flora and Fauna Survey Guidelines (2012) that require one survey during the peak flowering season. This is also clearly outlined in the Lake Macquarie *T. juncea* Planning and Management Guidelines (2014), "The accepted method of assessment for *T. juncea* is to conduct one survey during the peak flowering period that has now been confirmed to be mid-September to mid-October" (LMCC Flora and Fauna Survey Guidelines, 2013:128). The Sustainability Department are satisfied that the *T. juncea* survey was adequately undertaken.

Concern has been raised that the survey in regard to the Glossy Black Cockatoo and its habitat was also inadequately conducted. One submission commented "Glossy Black Cockatoo frequent the site and food trees exist for them on the site, to indicate that importance of the habitat is minimal is incorrect. The fauna survey would have identified their presence if it was not so minimal (1 hour) on 1 day". Consultation with Council by the ecologist concluded that the survey periods (16, 18 and 19 September) were adequate to identify the Glossy Black Cockatoo at the site. While the ecologist did not visually identify the Glossy Black Cockatoo, they acknowledge its presence is 'likely'.

They noted however, the feeding trees *Allocasuarina* were small and the loss of these would not affect the habitats of these cockatoos living in the surrounding areas.

- *Loss of amenity and overshadowing*

Concern has been raised that the residential development will result in loss of amenity and overshadowing for the current residents. The 8.5m height limit under R2 Low Density Residential (Draft LMLEP2014) zoning is compatible with the surrounding development, many of which are two storeys in height. Subsequent development applications for buildings on the site will be assessed against Council's Draft Development Control Plan (Draft DCP 2014). The Draft DCP requires the developments be consistent and sensitive to the surrounding dwellings, ensuring consistent height and setback to avoid privacy or overshadowing impacts.

- *Proposed E2 Environmental Management zone (Secondary) (Draft LMLEP2014) should be extended*

Concern has been raised that the proposed E2 Environmental Management zone (Secondary) should be extended to include areas of fill that were dumped in the wetland area to extend the sporting field to its current size. This would enable the wetland to be extended to its previous extent. The Sustainability Department have indicated that the extent of the proposed E2 Environmental Management zone (Secondary) is considered appropriate. The sporting field will act as a buffer to the residential development.

- *Development Application should be lodged in conjunction with Rezoning Application*

Concern has been raised that the development application should be lodged in conjunction with rezoning application to limit the possibility of expanding its residential development. However, the subject site will be restrained by the same permissible uses, minimum lot size, floor space ratio and height as surrounding lots in the area. The owners are under no obligation to lodge a development application in conjunction with the rezoning. There are provisions in the Environmental Planning and Assessment Act 1979 (*EP&A Act 1979*) for the assessment of a joint rezoning and development application (Division 4B, section 72I-72K). Under this provision, there is no obligation for Council, the landowner or proponent to make an application. The proposed rezoning is consistent with the adjoining zoning and the same planning controls and development guidelines will apply.

- *Existing residents were not notified*

Concern has been raised that not all residents within a reasonable distance of the site were notified. Council has issued written notification to affected and adjoining landowners in relation to the proposal to rezone the subject site in accordance with the Guideline for Preparing Local Environmental Plans from the Department of Planning and Environment (2013). It is standard practice to notify all landowners immediately adjoining the subject site and place an advertisement in the local newspaper. On 24 January 2014 letters were sent to 28 adjoining landowners advising of the proposal. A notice was placed in the Newcastle Herald on 25 January 2014 and Newcastle Post – Lake Macquarie Edition on the week beginning 27 January 2014.

- *Information on Geotechnical and Phase 1 Contamination Assessment Report*

Concern has been raised that the Contamination Report included studies on the wetland area and the oval, which are not proposed for residential development. This could indicate the whole site is being considered for residential development. However, under the State Environment Planning Policy No.55 - Remediation of Land, a contamination report must cover the whole site of rezoning area.

Part 5 – Project Timeline

Action	Timeframe
Commencement date	July 2013
Timeframe for completion of technical information	December 2013
Timeframe for external consultation	January 2014
Public Exhibition	January - February 2014
Consideration of submissions	End of February 2014
Post exhibition Planning Proposal preparation	March 2014
Submission to Department	July 2014
Date RPA will forward to the DoP&E for notification (if delegated)	August 2014

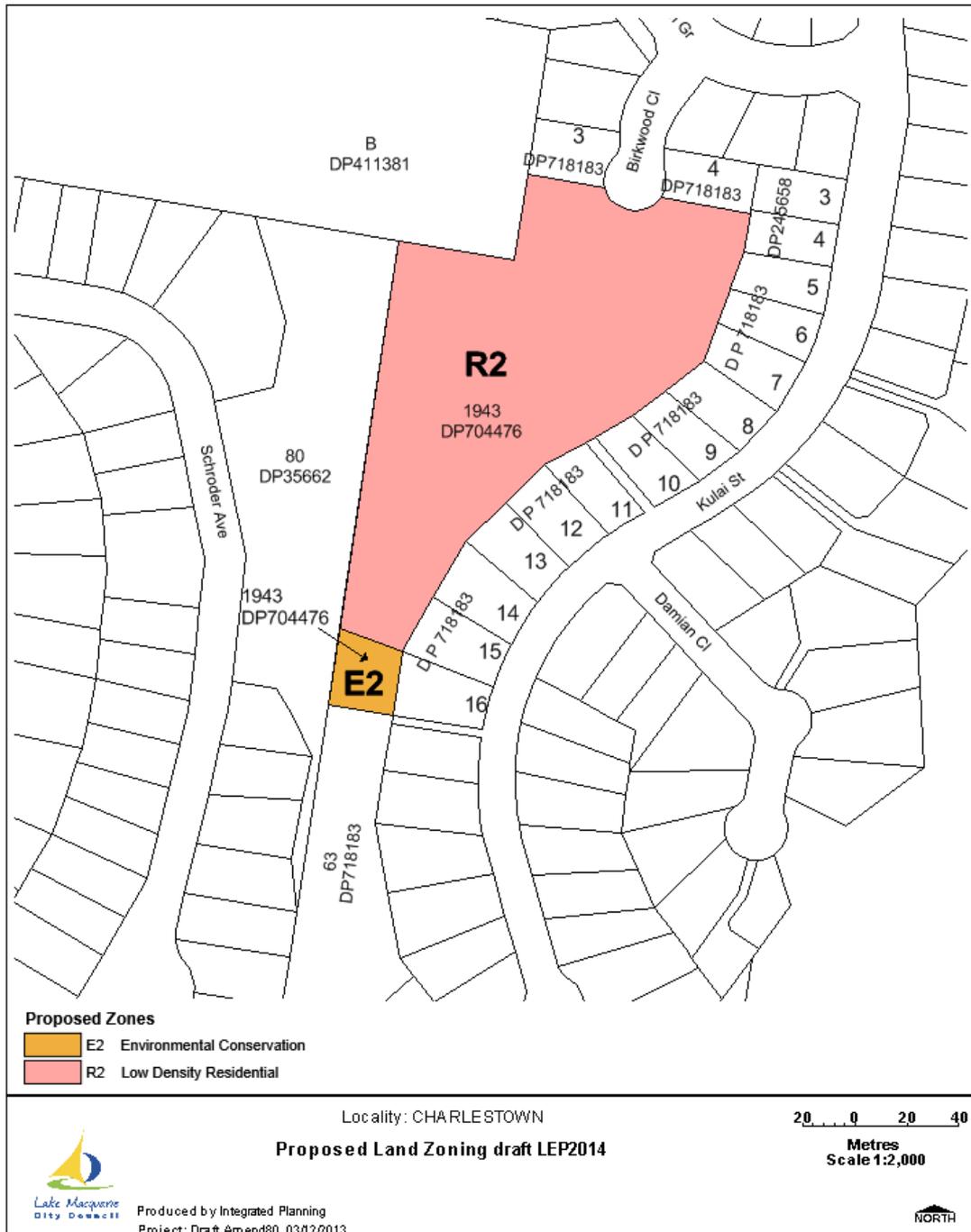
Appendix 1 – Locality Map



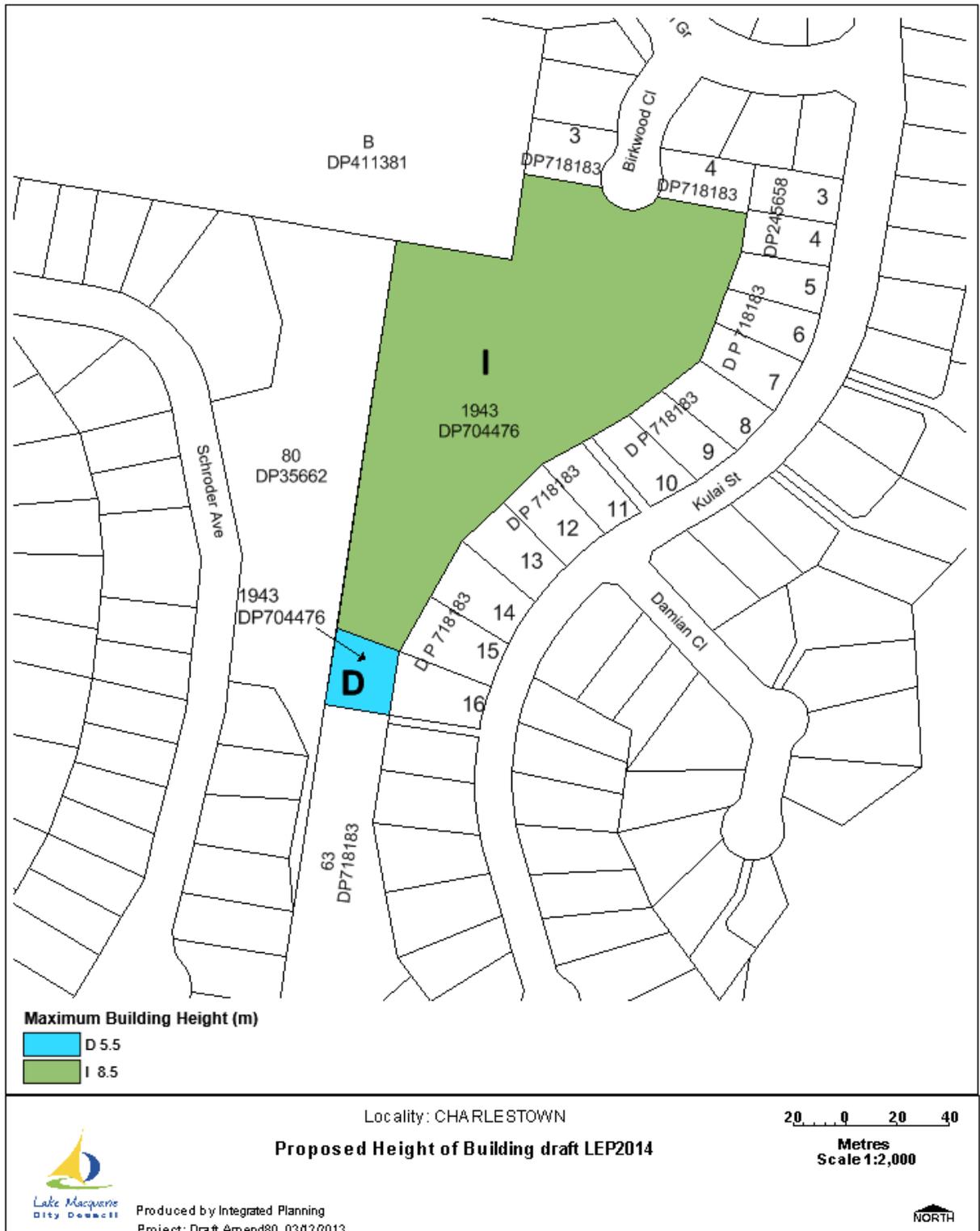
Appendix 2 – Current LMLEP 2004 Zoning and aerial photo



Appendix 3 – Proposed Zoning (Draft LMLEP 2014)



Appendix 4 – Proposed Height of Building Map



Appendix 5 – Proposed Lot Size Map



Appendix 6 – Preliminary Structure Plan



<p>PLANNING DESIGNS HERITAGE LIFESPACE DESIGN</p> <p>CITY PLAN LIFESPACE DESIGN</p>	<p>Exclude all</p> <ul style="list-style-type: none"> - Do not scale from this drawing - Note this drawing is subject to all the above approvals - All design information is preliminary and subject to detailed design, conditions of consent, and further detailed design. <p>Copyright © The Plan Urban Group</p> 		<p>Drawing No: 12-04-UD-01 Rev: A Scale: NTS Date: 11 September 2015 Drawn by: JNT</p>	<p>BIRKWOOD CLOSE, CHARLESTOWN PRELIMINARY CONCEPT PLAN FOR INFORMATION</p>
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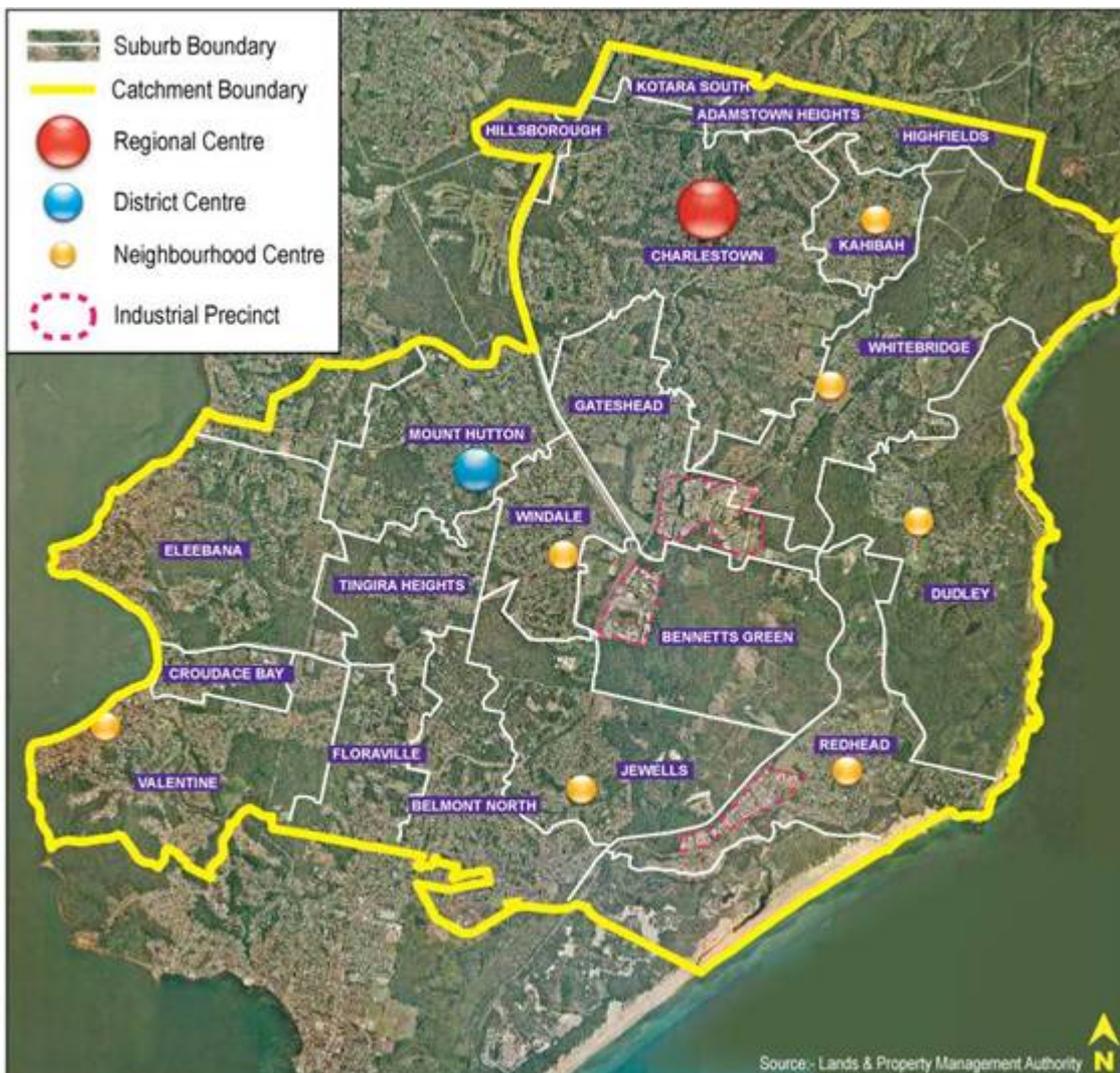
Attachment 1 – Justification of inconsistency – Ministerial Direction 6.2 Reserving Land for Public Purpose

At the moment there is no current type of Needs Study for the Charlestown-Gateshead area. However, it can be confidently stated that the land at 5 Birkwood Close, Charlestown has not been identified in a plan to be acquired by Council for public open space purposes and so there is no requirement for an acquisition layer to be placed over that land.

Council confirms it has no plan to acquire this land for Open Space.

In relation to the request for information about the demand/supply of open space in the Charlestown-Gateshead area, the following advice is provided:

Council is preparing Recreation and Land Plans for Lake Macquarie Local Government Area. The subject site, 5 Birkwood Close, Charlestown, is located within the centre of the Charlestown contributions catchment, the boundary of which is identified on the attached plan. Council have prepared a preliminary draft of the Recreation and Land Plan for the Charlestown Contributions Catchment.



Even though it would appear the LMCC has an over provision of open space within the city, the quality of that space or its usability for recreation is what has been examined in the Recreation and Land Plan. Based on an existing population of 59,520, the Charlestown Contributions Catchment, has 18.6 ha of community land within the catchment. Community Land is publicly accessible land such as a public park or public reserve owned or managed by

Council. Community land has been categorised as Natural Area, Park, Sportsground and General Community Use only, in accordance with the Local Government Act 1993. The community land categorised park is 1.7 ha/1,000 population and sportsground is 1.9 ha/1,000 population.

However, only a small proportion of that land is usable recreation land. Land categorised as sportsground or park includes that may be developed into a sportsground or park in the future. Land categorised as park includes any land that may be mown and maintained and it includes other miscellaneous lands, such as road buffers, drainage reserves (detention/retention basins, wet ponds), small or irregular shaped parcels (residue lands from subdivision), flood prone/low lying land, electricity easements or other restrictions that render the land unusable. In addition, some land categorised as a sportsground also includes some natural areas or creek lines if they also occur within the parcel of land.

The existing recreation land (land used for sportsgrounds, parks and other uses such as dog exercise areas) within the catchment is 141.3 hectares.

Given the existing population of 59,520 the existing recreation land equates to 2.36 ha/1,000 population. Compared to the recognised standard of provision of 2.83 ha/1,000 population, there is an under-provision of recreation land within the Charlestown Contributions Catchment.

Attachment 2 – Concurrence letter from DoPE – Ministerial Directions 3.2 and 6.2



**Planning &
Environment**



Mr Brian Bell
General Manager
Lake Macquarie City Council
PO Box 1906
HUNTER REG MAIL CTR NSW 2310

Our ref: 13/09386-1
Your ref: RZ/2/2013:Kevin Lee

Dear Mr Bell

**Lake Macquarie LEP 2004 Amendment 80: Rezone Lot 1943 DP 704476
at 5 Birkwood Close, Charlestown from 6(1) Open Space to 2(1) Residential
PP_2013_LAKEM_007_00**

I refer to the proposal's consistency or otherwise with Section 117 Directions 3.2 Caravan Parks and Manufactured Home Estates, and, 6.2 Reserving Land for Public Purposes. Consideration of these Directions was deferred pending exhibition and community response.

Council's information provided on 7 and 8 May is appreciated, particularly the assessment of this land as being unsuitable for public open space acquisition.

I advise that, as delegate of the Secretary I have accepted the inconsistency of the proposal with Section 117 Directions 3.2 Caravan Parks and Manufactured Home Estates as being of minor significance in the circumstances of this case. The open space reduction is also approved and the Planning Proposal is therefore consistent with 6.2 Reserving Land for Public Purposes.

The Department welcomes Council's review of public open space within the Charlestown catchment and considers this an appropriate response to the submissions made.

If you have any questions in relation to this matter, please contact Ken Phelan of the Department of Planning and Environment Newcastle Office on 4904 2705.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Rowland'.

12 May 2014

**David Rowland
General Manager**