

Mr Dan Simpkins  
Director, Central Coast and Hunter Region  
NSW Department of Planning, Industry and Environment  
Level 2, 26 Honeysuckle Drive  
NEWCASTLE NSW 2300  
By email: Daniel.Simpkins@planning.nsw.gov.au

Dear Mr. Simpkins,

**Re: PP\_2020\_PORTS\_005\_00 Planning proposal to rezone from RU1  
Primary Production to R5 Large Lot Residential**  
**Property: Lot 1, DP 1191203  
610 Seaham Road, Nelsons Plains**

Thank you for your letter and Gateway determination dated 12 April 2021 regarding the abovementioned planning proposal.

Council is seeking an alteration to the Gateway determination and requests that conditions 1(a), 2(c) and 4 are deleted with an amendment to condition 5 for the reasons set out below.

**Request to delete Condition 1(a) *Incorporate a 2 hectare minimum lot size***

Our assessment would suggest that a minimum lot size of 2 hectares will not necessarily result in the orderly and economic use and development of the land. Therefore the planning proposal (**ATTACHMENT 1**) has also been amended to incorporate additional justification for the lot size as originally proposed.

The following information outlines the reasoning behind this request.

**Precedent for rural residential land with lot sizes less than 2 hectares in the locality**

The Gateway Determination Report prepared by the NSW Department of Planning, Industry and Environment (DPIE) states that the planning proposal seeks to allow large lot residential lots with minimum lot size controls that are lower than the existing controls within the R5 Large Lot Residential (R5) zone in the locality however, the Gateway Determination Report does not provide any examples or evidence to support this statement.

While the minimum lot size for R5 zoned land in the locality is designated at 20,000sqm in the Port Stephens Local Environmental Plan (LEP), the subdivision pattern does not reflect this.

Lot Size Analysis Maps (**ATTACHMENT 2**) identify a number of existing R5 zoned lots that are less than 8,000sqm and that the vast majority of lots zoned R5 in the locality are less than 20,000sqm.

For example:

- LOT: 5 DP: 813582–4,600sqm
- LOT: 8 DP: 813582 – 3,950sqm
- LOT: 1 DP: 813582 – 3,980sqm
- LOT: 101 DP: 867155 – 4,100sqm
- LOT: 11 DP: 614855 – 8,380sqm
- LOT: 36 DP: 1011534 – 6,350sqm
- LOT: 34 DP: 1011534 – 7,170sqm
- LOT: 105 DP: 776053 –7,300sqm

There are also many precedents for the LEP prescribing a minimum lot size of less than 20,000sqm in the R5 zone, including in a locality that neighbours Seaham and Brandy Hill.

For example:

- Rosebank Dr, Wallalong – 10,000sqm
- Sylvan Av, Medowie – 10,000sqm, 4,000sqm
- James Rd, Medowie – 10,000sqm
- Heritage Av, Medowie – 4,000sqm and 2,000sqm
- Pastures Dr, Medowie – 10,000sqm
- Clark St, Anna Bay – 4,000sqm
- Kingston Par, Heatherbrae – 2,000sqm

There are also examples in and around Brandy Hill of rural residential subdivisions that are less than 20,000sqm that are not zoned R5 including the 8,000sqm lots zoned RU1 Primary Production (RU1) which are 500m south-west of the site, fronting Seaham Road and the lots along Ambaura Close, which are less than 2,000m south-west of the site.

The above examples and the prevailing minimum lot sizes for the area illustrates a strong precedent for rural residential land with lot sizes less than 20,000sqm.

The planning proposal is consistent with the 'Buffer zones to reduce land use conflict with Agriculture' Interim Guidelines (Department of Primary Industries (DPI) NSW, (2018)

The Gateway Determination Report refers to 'an inconsistency with the 'Buffer zones to reduce land use conflict with Agriculture Interim Guidelines' (DPI NSW, 2018) which recommend a separation distance of 1km between indoor poultry establishments and residential development.'

The Guidelines contain a table referring to a 1km separation distance between poultry operations and residential development which is further clarified in the Guidelines by the following:

*'The distances suggested in Table 1 are intended to be used as a guide and an initiator for further evaluation. The use of these 'evaluation' distances by proponents will help reduce land use conflict by initiating an assessment as to what constitutes a satisfactory buffer zone. Site specific considerations such as topography, vegetation, the nature of the adjacent agricultural operation(s) as well as the type of proposed development, should all be considered when undertaking any assessment to determine separation distances and buffer zones. It is possible, indeed likely, that a formal evaluation will stipulate different distances than indicated in Table 1. Therefore, these are the distances that should be applied to the development.'*

The Guidelines refer to 'further evaluation' which should be used to determine appropriate buffer distances from agricultural industries.

In accordance with the Guidelines, the planning proposal was accompanied by an odour assessment, an independent expert review of the odour assessment report, and a community survey on the impacts of odour in the area to support the proposed minimum lot sizes and buffer distances.

The odour assessment takes into account the topography, meteorological conditions, vegetation, as well as the nature of operations and dispersal methods of the nearby poultry operations and supports a minimum lot size of 8,000sqm. The odour assessment report identifies that odour due to poultry farms has not historically been an issue for the area and it recommends building envelopes and set backs on the lots closest to the poultry farms to ensure future dwellings can meet the predicted odour assessment criteria, pursuant to the NSW Government's 'Technical Framework– Assessment and Management of Odour from Stationary Sources in NSW (DEC 2006).

The proposed subdivision layout reflects how the minimum lot size will give effect to the recommendations of the odour assessment and shows that appropriate buffer distances can be met (**ATTACHMENT 3**).

The planning proposal retains the rural character of the locality

The Gateway Determination Report states that a lot size of 20,000sqm will 'maintain the scenic qualities and rural character of the area' however, the report does not include any examples or evidence to support this statement.

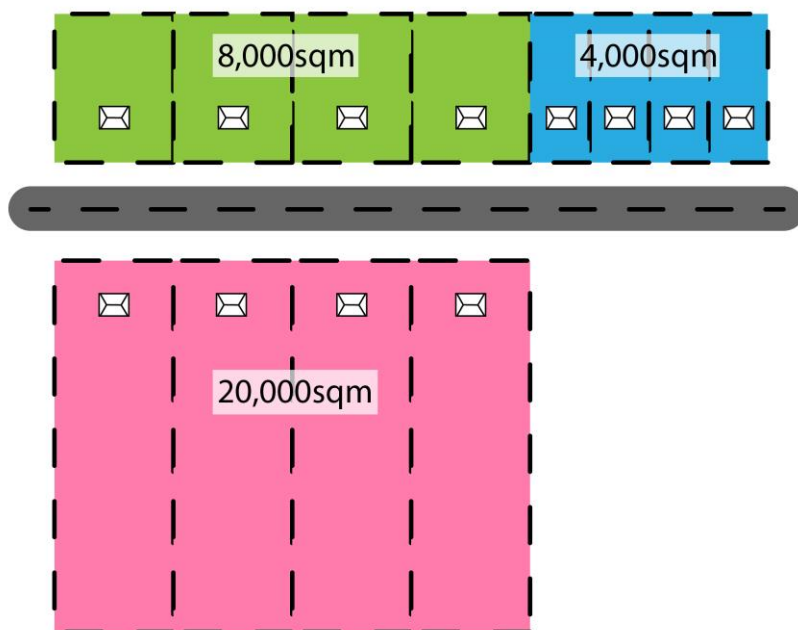
A character analysis undertaken for the locality (**ATTACHMENT 4**) considers the character and rural amenity of streetscapes and assesses the impact of existing lot sizes at 4000sqm, 8000sqm and 20,000sqm. This analysis shows that from the street, lots at 4,000sqm had a different visual 'feel' than those at 8,000sqm, but lots between 8,000sqm and 20,000sqm have a very similar 'rural' character due to lot width and dwelling placement.

The look and feel of the different lot sizes is an outcome of Port Stephens Development Control Plan (DCP) 2014 controls, the cost of infrastructure provision, and the desired

residential amenity of those developing the land. To ensure development does not detract from the amenity of the area, the DCP contains setback requirements. The setbacks for land zoned R5 are the same as the setbacks for land zoned RU1, which is that dwellings need to be located a minimum of 10m from boundaries.

Even if a dwelling is approved via a complying development certificate (CDC) under State Environmental Planning Policy (Exempt and Complying Codes) 2008, and the DCP does not apply, there are requirements that apply in relation to setbacks, landscaping, building height and maximum gross floor area to retain a rural character in the RU1, RU2 and R5 zones.

The character analysis undertaken for the locality demonstrates that at 4,000sqm the overarching factor in determining lot configuration is the amount of private open space behind the dwelling. At 8,000sqm, the primary determining factor is increased privacy achieved by dwelling separation, and at 20,000sqm the primary determining factor is infrastructure cost. This has resulted in a typical lot configuration consistent with **Figure 1** below, which demonstrates that despite lots of 20,000sqm being bigger in size, due to the cost of infrastructure provision, they are generally no wider, and dwellings are positioned on each lot at the same depth. As a result of this, lots at 20,000sqm in the locality do not have a more 'rural' character when viewed from the street than the lots that are 8,000sqm.



**Figure 1**

### The planning proposal will not create a 'hard-urban edge'

The Gateway Determination Report states that introducing a more intensive built form via a minimum lot size of 8,000sqm of large lot residential development on the periphery of the R5 zone may create 'a hard urban edge' to the surrounding primary production land however, the report does not include specific evidence to support this statement.

A minimum lot size of 8,000sqm will not result in an urban built form. Based on the proposed lot dimensions (**ATTACHMENT 3**), a lot size of 8000sqm is highly unlikely to result in a 'hard urban edge'. Generally, the proposed lot dimensions are 80m x 100m, and as a result have significant opportunities for landscaping. This would allow for a 100m separation between adjoining residential buildings and rural style fencing. In contrast, a hard urban edge resulting from 500sqm lots may typically have lot dimensions of 15m x 30m, a 1.8m separation between adjoining residential buildings, colorbond fences and 4m x 4m afforded to private open space, as required by the DCP.

This is further reinforced by the precedent of rural residential development in the area and in other rural parts of Port Stephens with a similar minimum lot size that have not created a 'hard-urban edge', e.g. see the list of properties above.

### The planning proposal is unlikely to result in land use conflict

The Gateway Assessment Report states that the proposal may have the potential to create ongoing land use conflicts with existing and future agricultural operations.

The proposed subdivision plan (**ATTACHMENT 3**) shows lot configurations that will mitigate the potential impacts from odour from nearby poultry farms. The lots fronting Brandy Hill Drive are proposed to have increased sizes or are set back from the road via the use of building envelopes due to the measures taken to mitigate odour impacts. For example, in the north-western corner of the site there is a lot that is 45,700sqm which is in response to the required odour buffer. Importantly, these setback distances will not change if the proposal is for a minimum lot size of 20,000sqm or 8,000sqm as these distances are informed by odour contours, not minimum lot size, therefore supporting deletion of this Gateway condition.

An adjoining holding is currently used to graze beef cattle and the 'Buffer zones to reduce land use conflict with Agriculture Interim Guidelines' states that a separation distance of 50m is recommended between grazing operations and future dwellings. The indicative subdivision layout (**ATTACHMENT 3**) demonstrates a separation of 50m will be able to be achieved.

No other potential for land use conflict has been identified in the Gateway Determination Report. This may be reflective of the existing neighbouring rural residential development located along the northern boundary of the site and in the general vicinity.

The planning proposal refers to an audit of Council's complaints register. There have been no complaints in relation to the nearby poultry or grazing operations in the last five years from the existing neighbouring residences. If a complaint were to arise from future development of this site, the NSW Right to Farm Act and Policy ensures that farmers are able to undertake lawful activities in line with accepted industry standards without undue interference or nuisance complaints.

The proposed lot size is consistent with the rural residential planning proposals submitted for 792 Seaham Road, Seaham and 22 Warrigal Close, Brandy Hill

The Gateway Determination Report refers to two other planning proposals in the vicinity being 792 Seaham Road, Seaham and 22 Warrigal Close, Brandy Hill which are seeking a minimum lot size of 20,000sqm.

These planning proposals are seeking a minimum lot size of 20,000sqm because they are significantly more affected by flood impacts. Because of this, future dwellings on these sites will be required to be located on higher land and in close proximity to the future roads and future dwellings on adjoining lots. The result will be a built form outcome that resembles development with an 8,000sqm minimum lot size on unconstrained land (such as the likely future development of the 610 Seaham Road site).

**Table 1** below compares the three planning proposals and the area of land above the 1/100 AEP that is proposed to be rezoned in hectares:

**Table 1**

Address	Area to be rezoned (ha)	Area above 1% AEP	Lot Yield	Area above 1% AEP/yield
792 Seaham Rd, Seaham	44	24	18	1.33
22 Warrigal cl, Brandy Hill	7	5	4	1.25
610 Seaham Rd, Nelsons Plains	39	39	38	1.02

The table shows that the difference in density is minor when considering the lot layouts in relation to flood free land. This is further reinforced by the indicative subdivision plan for 792 Seaham Road (**ATTACHMENT 5**) showing more narrow blocks and narrow street frontages that are commensurate with an 8,000sqm minimum lot size. Whilst these two planning proposals in the locality appear to result in a 'more rural' character because of a proposed larger minimum lot size, the built form outcome will likely be a very similar density of housing and consistent with the outcomes proposed in the planning proposal for 610 Seaham Road.



**Request to delete Condition 2(c) Public exhibition is to commence by 1 December 2021**

The Gateway determination includes a condition which requires public exhibition to commence prior to 1 December 2021.

As there is already a timeframe provided in the Gateway determination for finalisation of the planning proposal (Condition 5), Council requests that this condition is deleted. If the condition cannot be deleted, we would request that the condition be amended to take into account the time already taken consulting with DPIE and preparing this Gateway alteration request.

**Request to delete Condition 4 A public hearing is required to be held into the matter by Port Stephens Council under section 3.34(2)(e) of the Act following community consultation**

The Gateway Assessment Report refers to a 'public hearing seeking community views on the proposed rural residential development and its interface with agricultural uses'.

Council is unaware of any precedent for a Gateway requirement for a public hearing for a rezoning on private land.

It is our understanding that public hearings for planning proposals are limited to proposals that reclassify council land and provide additional oversight and transparency when a council is proposing to change what can be done on community land.

We understand public hearings are generally held for large scale development applications and major projects with significant impacts that have not already been the subject of consultation as part of a strategic planning process.

We don't believe these circumstances are relevant to this planning proposal; given its consistency with local strategic planning processes that have had significant community engagement over the past two decades.

We believe this condition lacks recognition of the extensive engagement and consultation already undertaken in relation to potential rural residential development in Brandy Hill and the locality over the past 20 years.

The **2002 Rural West Local Area Plan** identified potential rural residential development in the west of Port Stephens, including Nelsons Plains and Brandy Hill. The Plan was exhibited and adopted in 2002, and was informed by the Port Stephens Council Rural Issues Paper 2000: A Discussion Paper Presenting Issues, Options and a Draft Rural West Lands Strategy.

As part of the preparation of the Plan, Council held a Rural Land Use Seminar with the community, which identified issues of rural land use management and agriculture, including the potential ways of managing land use in rural areas. The issues addressed in

the Rural Issues Discussion Paper were identified through a public forum and later exhibited to encourage further public input.

The **2011 Rural Lands Study and Rural Lands Strategy** (funded by DPIE through the Planning Reform Fund), identified potential rural residential development in the local government area, including Seaham and Brandy Hill, subject to satisfying 'exclusionary criteria' and 'management criteria'. These documents and criteria were prepared in consultation with the community and exhibited and adopted in 2011.

The **2015 Port Stephens Rural Residential Strategy** adopted the criteria from the Rural Lands Study and Rural Lands Strategy to identify mapped areas suitable for new rural residential development, including Brandy Hill and the locality. 29 submissions were received during exhibition. A series of workshops and roundtable discussions were had during the 3 month public exhibition period. DPIE and the NSW Department of Primary Industries participated in the preparation of this Strategy.

The **2016 Rural Residential Policy** adopted the 'exclusionary criteria' and 'management criteria' from the Rural Lands Study, Rural Lands Strategy and Rural Residential Strategy. Community consultation on the draft Policy included consultation on the specific mapped areas that satisfied the criteria from the Rural Lands Strategy, including Seaham and Brandy Hill. 9 submissions were received and the Policy was adopted in 2017. DPIE, the NSW Department of Primary Industries, and peak industry bodies were consulted during the preparation of this Policy. The Policy was most recently reviewed in 2019 and no submissions were received during exhibition.

The **2020 Port Stephens Local Housing Strategy** was prepared and exhibited to enable future rural residential rezonings to be prepared in accordance with Council's prior rural residential strategies and policies. The Housing Strategy incorporates the criteria in the Rural Lands Study, Rural Lands Strategy, Rural Residential Strategy which identifies the areas mapped in 2015 and 2016, including specific sites at Nelsons Plains, Seaham, and Brandy Hill, and the Rural Residential Policy (which has now been repealed). 32 submissions were received during community consultation. DPIE, the NSW Department of Primary Industries, and peak industry bodies were consulted extensively during the preparation of this Strategy.

Since the adoption of the **Port Stephens Community Engagement Strategy in 2020**, Council has invested in innovative, modern engagement tools to inform planning decisions, based on IAP2 best practice engagement. For example, establishing a Port Stephens Liveability Index, informed by responses from over 3000 residents, which allows Council to respond to the values and priorities of our unique communities. As part of the Liveability Index, communities in and around Seaham, Brandy Hill, and Nelsons Plains told us they value local infrastructure such as paths, public spaces and playgrounds and economic development opportunities, including for small business in the area as a priority.

Council's Community Engagement Strategy will be implemented during the exhibition of this planning proposal, including notification to adjoining and adjacent landowners,



notification on Council's website, newsletter and 'Have Your Say' webpage, and various social media platforms.

From the preparation of the Rural West Local Area Plan in 2002, to the adoption of the Housing Strategy in 2020, the strategic justification for future rural residential development in the locality and on this site has not changed. Given a robust strategic framework is already in place, which has been tested with the community, the statutory process to give effect to the endorsed strategic outcomes that framework (the planning proposal) should be able to proceed without undue delay.

Based on best practice community engagement and our experience and understanding of engagement with the Port Stephens community, holding a public hearing or 'town hall style' meeting during or after the exhibition of this planning proposal is unlikely to make a meaningful contribution to the assessment and decision making process over and above the consultation that has already been undertaken.

**Request to amend Condition 5 *The time frame for completing the LEP is 14 months following the date of the Gateway determination.***

An alteration is requested to Condition 5 to allow 14 months from the date of an amended Gateway. This is necessary given the time taken to consult on and prepare this Gateway alteration request and to take into account the delays in the Gateway process noted below.

**Gateway Process**

As outlined in our previous correspondence to DPIE and the Hunter Joint Organisation of Councils, dated 29 September 2020 (**ATTACHMENT 7**) Port Stephens remains committed to streamlining, simplifying and standardising processes for planning proposals and ensuring Hunter councils (and our community) see a return on the investment in regional and local strategic planning through efficiencies in the rezoning process. We are also committed to ensuring we can meet the State government targets to slash rezoning assessment times by 33 per cent by June 2023.

The process undertaken so far and the Gateway conditions for this planning proposal demonstrate the value of some of the reform proposals put forward by Port Stephens Council as part of the proposed 'Hunter Approach to Rezoning' could add, including:

- Adopting a risk based approach to assessments where planning proposals are consistent with strategic plans, and tailoring conditions and requirements to address key assessment issues.
- Consultation with councils before issuing Gateway determinations with conditions to avoid the need for Gateway alterations.
- Adopting a standardised approach to make the process more efficient and give proponents and other stakeholders more certainty about timeframes and the likely information requirements for assessment.

In particular, key dates in the process for this planning proposal show how there are opportunities to increase efficiency and timeliness in the Gateway process and improve rezoning assessment timeframes overall.

**Key dates for PP\_2020\_PORTS\_005\_00**

21/9/20	Council requests Gateway determination.
29/9/20	DPIE request additional information to support adequacy assessment (Hunter Water advice and lot size analysis).
30/10/20	DPIE request further additional information to address pre Gateway comments from NSW Department of Primary Industries.
24/12/20	Council provide additional information to DPIE as requested.
24/12/20	DPIE request updated planning proposal to incorporate additional information.
29/1/21	Council submits updated planning proposal to DPIE.
7/4/21	DPIE issue a draft Gateway determination.
12/4/21	DPIE issue a Gateway determination with conditions not included in the draft.

Some of the opportunities for efficiency we have identified include:

- This proposal was subject to pre Gateway agency consultation, which is not part of the standard process for rezonings and was not the process followed for similar rural residential proposals at 22 Warrigal Close, Brandy Hill or 792 Seaham Road, Seaham. Despite this, the Gateway conditions require further agency consultation.
- It was not clear whether DPIE needed additional information or an updated planning proposal until 3 months after the request was issued to Council. A standard template request and process could clarify requirements and reduce timeframes in responding.
- Adequate consultation with Council (as opposed to notification) prior to the issue of a Gateway determination and the imposition of Gateway conditions could avoid the need to prepare a request to alter the Gateway conditions.

It is for the reasons detailed in this letter that Council requests that the Gateway determination for the planning proposal at 610 Seaham Road, Nelsons Plains is amended to remove unnecessary requirements and to reflect the lot size originally adopted by Council. Please contact Liz Lamb, Strategic Planning Co-ordinator on 4988 0293 or by email [elizabeth.lamb@portstephens.nsw.gov.au](mailto:elizabeth.lamb@portstephens.nsw.gov.au) should you require any further information on this matter.

Yours sincerely,



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