Ccl ref: PP2011.009.0004
DPI ref: TBA
Date: April 2013

Planning Proposal under s55 of the EP&A Act

Port Macquarie-Hastings LEP 2011 (Amendment No. 24)

Lot 1 DP318920, Lot 1 DP222740, Lot 229 DP754434 and Lots 53 & 54 DP747427 Fernbank Creek, Port Macquarie.

PORT MACQUARIE HASTINGS

	Version Date (blank until achieved)
Reported to Council [sec 55]	28 March 2013
Referred to Dept of Planning as grouped amendment[sec 56 (1)]	6 September 2012
Gateway Panel determination [sec 56 (2)]	28 September 2012
Revisions following Gateway Determination	12 November 2012
Revisions following decision to separate sites into individual PPs	April 2013
Public Exhibition [sec 57]	
For Council review [sec 58 (1)]	
Adopted by Council for final submission & referred to Dept of Planning [sec 58 (2)]	

Council reference:	PP2011.0009.04 Fernbank Creek, Port Macquarie Port Macquarie-Hastings LEP 2011 (Amendment No 24)
Department of Planning & Infrastructure reference:	

Adoption of the Planning Proposal

1. For initial Gateway determination

The undersigned Council delegate endorsed this revised Planning Proposal in relation to Fernbank Creek for referral to the Department of Planning and Infrastructure on 19 April 2013:

Signed .....

Name Sandra Bush .....

Position Acting Manager Strategic Planning .....

2. For section 58 finalisation

This Planning Proposal was endorsed on …… by Port *Macquarie-Hastings Council,* or *the undersigned Council delegate* [delete one]:

Signed .....

Name .....

Position .....

Executive Summary

The "Planning Proposal" describes a proposed amendment to *Port Macquarie-Hastings Local Environmental Plan 2011* to rezone land at Fernbank Creek, Port Macquarie.

The nominated site is at Fernbank Creek, Port Macquarie. It is one of two sites originally included in Port Macquarie-Hastings Council's *Grouped Amendment for 2011/12* (Amendment No. 12) to rezone land at Oxley Highway, Wauchope and Fernbank Creek, Port Macquarie.

Due to differences in status, it has been necessary to separate the grouped amendment into two stand-alone planning proposals to facilitate appropriate timeframes for completion.

In this regard, staff at the Regional Office Department of Planning and Infrastructure has advised Council that a new Planning Proposal in relation to the site at Fernbank Creek is required.

The Planning Proposal has been revised as PP2011.0009.4 *Port Macquarie Hastings Local Environmental Plan 2011 (Amendment No 24)*.

The Planning Proposal contains statements in relation to the intended outcome of the proposed changes to LEP 2011 in relation to the site at Fernbank Creek, together with an explanation of provisions that are to be included in the proposed instrument.

Justification for preparation of the Planning proposal is set out in Part 3 and a version of the map sheets intended to give effect to the instrument are included in draft format to indicate the substantive effect of the proposed instrument. The Site Identification Map identifies the land to which the planning proposal applies.

Council anticipates that consultation with the Office of Environment and Heritage, the NSW Rural Fire Service and Transport NSW – Roads and Maritime Services will be required consistent with the original Gateway Determination issued in September 2012 in relation to the 'grouped amendment' Department Ref:PP_2012_PORTM_006_00.

In respect to Community consultation, the proposal is inconsistent with the criteria for a low impact proposal and Council requests a 28-day public exhibition period.

Contact Details:

Leanne Fuller
Strategic Projects Officer
Ph: 02 65818111

leanne.fuller@pmhc.nsw.gov.au

Port Macquarie-Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

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Planning Proposal

This is a new Planning Proposal relating to land at Fernbank Creek, Port Macquarie.

The Planning Proposal has been prepared under section 55 of the *Environmental Planning and Assessment Act 1979*, in relation to a proposed amendment to *Port Macquarie-Hastings Local Environmental Plan 2011* to rezone the nominated site from *RU1 Primary production* to part *SP3 Tourist* and part Environment Protection.

Preparation of the Planning Proposal is consistent with the key implementation actions identified in the Port Macquarie-Hastings Urban Growth Management Strategy.

Port Macquarie-Hastings Council and the NSW Department of Planning, and Infrastructure, will assess the proposal and, subject to consultation with state agencies, the planning proposal will form the basis for public participation in the proposed LEP amendment.

A new Gateway Determination is required in relation to the land at Fernbank Creek following removal of the site from Planning Proposal PP_2012_PORTM_006_00 relating to land at Oxley Highway, Wauchope, and Fernbank Creek.

A copy of the new Determination will be included in the Planning Proposal for community consultation and public exhibition.

Background

Proposal	To convert land at Fernbank Creek from zone *RU1 Primary Production* with a minimum lot size of 40ha, to part zone *SP3 Tourist* and part Environmental protection. No change to the minimum lot size map is proposed.
Applicant Details	Hastings Estate Pty Ltd (for Cassegrain Winery, (Fernbank Creek Road) Fernbank Creek
Land owners	Hastings Estate Pty Ltd
Brief history	Council resolved in March 2012, to prioritise investigations for a grouped site-specific amendment relating to land at Wauchope and Fernbank Creek as part of the 2011/12 Strategic Planning Program. It has been necessary to remove the site at Fernbank Creek from the proposed grouped amendment due to delays in finalising studies in relation to the site. As a result, this is a new planning proposal for the land at Fernbank Creek. The Planning Proposal set out a case for amending the LEP based on Council staff review of the content and conclusions of the landowner's submission, and it explains the intended effect of the proposed instrument.
Location	Land included in the planning proposal is located at Fernbank Creek, Port Macquarie: Lot 1 DP 318920, Lot 1 DP222740, Lot 229 DP754434, and Lots 53 and 54 DP747427, Fernbank Creek. The site has dedicated road access to Fernbank Creek Road and existing utilities. The site will require on site water and effluent disposal pending upgrading and connection to

reticulated services when available.

In respect to effluent disposal, submitted information proposes a new reed-bed disposal system to supplant the current system located on land proposed for acquisition associated with realignment of the Pacific Highway in this location.

Details

Cassegrain Wines is located approximately 12 km west of Port Macquarie CBD adjacent to the Pacific Highway corridor. The site comprises two large lots and two small segments of former road reserve, totalling approximately 31 hectares. The two small segments of former road reserve are likely to be included in RMS acquisitions for Pacific Highway reconstruction works, including Sancrox overpass design and construction.

The current zoning is RU1 Primary Production and the minimum lot size for subdivision is 40ha.

The proponent's submission outlines a case for development of a tourism precinct incorporating land currently operating as 'Cassegrain Wines' at Fernbank Creek, Port Macquarie.

The submission includes a development concept, preliminary design drawings, project and infrastructure overviews, land holding, and zoning information together with conceptual information relating to tourist and visitor accommodation, stormwater and waste management.

Figure 2: Site 1 - Cassegrain Winery site showing winery at left and entertainment amphitheatre centre.

The concept drawings envisage a range of tourist and visitor facilities including a boutique guesthouse, apartment and motel complex, 28-site mobile home park and

landscaped gardens.

Current operations at the site include a winery business, cellar door operations, a restaurant, natural amphitheatre, picnic area, and BBQ facilities. Water and sewer is currently managed onsite. The application proposes that council consider an expansion of the tourist activity on the subject land, ancillary to the existing winery.

The site is undulating, ranging from approximately RL16.0m and RL13.0m on the south eastern knoll and north western corner of Lot 1 DP222740 to RL1.0m along the mid section drainage channel.

Dedicated road access is via Fernbank Creek Road.

Part 1 - Objectives or Intended Outcomes

To enable the development of land at Fernbank Creek, described as Lot 1 DP318920, Lot 1 DP222740, Lot 229 DP754434 and Lots 53 & 54 DP747427 Fernbank Creek, for a specialist tourism precinct and conservation of residual vegetation for environmental protection purposes.

Part 2 - Explanation of Provisions

The purpose of the Planning Proposal in relation to Fernbank Creek is to amend the Port Macquarie-Hastings Local Environmental Plan 2011, to rezone the site from zone *RU1Primary Production* to part zone *SP3 Tourist* and part environment protection. Rezoning of the site in the manner described will facilitate tourist related land uses, including tourist and visitor accommodation, ancillary development to the existing winery, and preservation of remaining vegetated areas for environmental purposes.

At this stage, the proponent's submission, and Council staff analysis of the site, forms the basis for the extent of land nominated for rezoning. Final zone boundaries will be determined following review and analysis of detailed studies relating to key issues.

Application of an appropriate environmental protection zone/s will be based on the findings of ecological investigations and the level of environmental protection required to sustain the environmental qualities of the land.

Part 3 – Justification

Section A - Need for the planning proposal.

Is the planning proposal a result of any strategic study or report?

Port Macquarie-Hastings Urban Growth Management Strategy identifies rural based tourism, particularly food and wine-based rural tourism, as a key contributor to the strength of the local industry.

As one of only two clearly recognisable rural tourist precincts in the LGA, the subject site is suitable for investigation as a dedicated specialist tourist precinct, ancillary to the existing winery and cellar door operations. Conversion of the site will provide certainty for the current development and facilitate minimum impact tourism operations relating to landscape and environmental values of the area.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the only legal method of amending Port Macquarie-Hastings LEP 2011 to permit consideration of development applications for a range of tourist related uses on the subject sites.

Additionally the planning proposal is the most appropriate means of providing for continuation of tourist related opportunities and adequate retention of native vegetation over this section of the Fernbank Creek catchment.

Acoustic Control (CL1) Map sheets may be required in relation to the site and consultation with Roads and Maritime Services is proposed.

A range of specialist studies reflecting the proposed development concept, are required to be submitted by the proponent prior to public exhibition of the planning proposal. These studies include:

- Site Survey, illustrating survey accurate cadastre and RMS acquisitions
- Cultural and Archaeological Heritage Assessment,
- Ecological Assessment,
- Bushfire Assessment,
- Access, Traffic and Movement Assessment
- Acoustic (Road Traffic) Assessment
- Servicing Strategy
- Geotechnical and Wastewater Assessment, detailing options for reticulated connections or onsite technologies.

The extent of land converted from *RU1 Primary Production* to SP3 Tourist and *Environment protection* will be subject to consideration and review of these studies

Is there a net community benefit?

A net community benefit is identified in connection with the proposed amendment. A summary of the net community benefit is described below:

- Conservation and management of existing environmentally sensitive areas, including wetlands, underpinning ecological, and tourism values for the benefit of the local community.

- Securing a locally important tourism asset in a special purpose zone.

- Opportunity for improved economies of scale associated with long-term infrastructure planning associated with development of the Sancrox Employment precinct.

The resultant community benefit outweighs not implementing the proposal.

There are no other spot rezoning proposals in the locality requiring consideration as part of this proposal.

Section B - Relationship to strategic planning framework.

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Fernbank Creek site is an existing tourism asset and the proposed ancillary expansion is consistent with the strategic objectives for tourism included in the *Port Macquarie-Hastings Urban Growth Management Strategy 2011*.

The UGMS is based on the *Mid North Coast Regional Strategy 2006-31*.

Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The proposal is consistent with Port Macquarie-Hastings Council's Towards 2030 Community Strategic Plan.

Is the planning proposal consistent with applicable state environmental planning policies?

<u>SEPP - Rural Lands</u>
Clause 7 of the SEPP sets out 8 "Rural Planning Principals" that must be considered in preparing any LEP amendments affecting Rural Lands.

a) *The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
b) *Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
c) *Recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
d) *In planning for rural lands, to balance the social, economic and environmental interests of the community,*
e) *The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
f) *The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
g) *The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
h) *Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed rezoning is assessed against these principles as follows:

- The site has not been identified in any planning document, including the NSW Mid North Coast Farmland Mapping Strategy as being "prime" agricultural land or of regional significance for farming activities;
- A small area of native vegetation on the site will be conserved in an appropriate environmental protection zone;
- The site has no forestry value or forestry industry potential;
- The site is not identified as being significant, or potentially significant in terms of its agricultural value;
- Existing viticultural pursuits will not be impacted by the proposal;
- Current infrastructure planning and servicing strategies assume the development scenario outlined in the planning proposal.

Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The relevant s117 directions are:

No 1.2 – Rural Zones
This direction states that land shall not be rezoned from rural purposes without the land being identified in a strategy approved by Council and approved by the Director General. The Planning Proposal is consistent with the endorsed tourism objectives of the *Port Macquarie-Hastings Urban Growth Management Strategy 2011-31,* an endorsed strategy.

No 1.5 – Rural Zones
This direction applies to any planning proposal affecting rural land and/or changing the minimum lot size provisions applying to rural zoned land. Consistency is measured in terms of conformity with *SEPP Rural Lands; Rural Planning Principles and Rural Subdivision Principles*. For consistency with the Rural Planning Principles, see SEPP comments elsewhere in this proposal. The *Rural subdivision Principles* include:

(a) the minimisation of rural land fragmentation,
(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,
(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,
(d) the consideration of the natural and physical constraints and opportunities of land,
(e) ensuring that planning for dwelling opportunities takes account of those constraints.
Note. *Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to changes in minimum lot sizes under local environmental plans in accordance with the Rural Planning Principles and the Rural Subdivision Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan.*

An assessment of the proposed rezoning against these principles follows:

- It is not intended to facilitate rural land fragmentation; it is proposed to maintain existing minimum lot size controls over residual rural and environmental areas to maintain existing amenity and character.
- In basing proposed zone boundaries on existing infrastructure and maintaining existing minimum lot size controls over the residual areas, the potential for land use conflict is minimised.
- The site is free of landslip hazards. The Port Macquarie-Hastings Local Environmental Plan 2011 Flood Planning map series identifies parts of the Cassegrain estate as being within the flood planning area. Affected areas comprise most of residual vegetation on the site and the intention is to conserve these areas for environmental protection. The site is otherwise unconstrained.
- It is not intended to facilitate additional dwelling eligibilities as a result of the planning proposal.

No 2.3 – Heritage Conservation
There is no known heritage item located on or in proximity to the site. The site has undergone significant modification as a result of past and present agricultural practices and more recently in association with winery and cellar door activities.

Standard conditions to manage appropriate handling of unearthed archaeological items will apply to any permit issued for future works on the site.

No 3.4 - Integrating Land Use and Transport
The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, and subdivision and street layouts achieve the following planning objectives:

a) *improving access to housing, jobs and services by walking, cycling and public transport, and*
b) *increasing the choice of available transport and reducing dependence on cars, and*
c) *reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
d) *supporting the efficient and viable operation of public transport services, and*
e) *providing for the efficient movement of freight.*

Consultation with NSW Road and Transport - Road and Maritime Services will be undertaken.

No 4.3 – Flood Prone Land
Minor Inconsistency. The greater part of the development footprint at Fernbank Creek is above the 1% Annual Exceedence Probability (AEP) level but partially within the Flood Planning Area.
The provisions of *Port Macquarie-Hastings Local Environmental Plan 2011*, require future residential and ancillary development to be commensurate with the flood hazard and have regard for management of the flood risk.

No. 4.4 – Planning for Bushfire Protection
The site comprises part bushfire prone land; being part Category 1 and part Buffer.

Consultation with the NSW Rural Fire Service is anticipated to be a requirement of the Gateway Determination issued by the Director General Department of Planning and Infrastructure.

No. 5.1 - Implementation of Regional Strategies
The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes, and actions contained in regional strategies.

Development of the site as proposed will implement the objectives of the *Port Macquarie-Hastings Urban Growth Management Strategy 2011-31* relating to tourism.

No 6.1 - Approval and Referral Requirements
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. The planning proposal / LEP does not introduce new provisions to require the concurrence, consultation, or referral of development applications to a Minister or public authority. The planning proposal is consistent with this Direction.

6.3 - Site Specific Provisions
The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. The proposal does not introduce any new site-specific planning controls.

Section C - Environmental, social, and economic impact

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?

Consultation with the Office of Environment and Heritage is assumed consistent with the requirements of the previous Gateway Determination issued in relation to the site.

Final drafting of zone controls to determine acceptable development footprints and environmental areas will be subject to analysis of proponent submissions, additional investigations where required, and the requirements of the Office of Environment and Heritage.

Section D - State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

Urban infrastructure services, including water, sewer, electricity, telecommunications, and waste management services are planned for the site.

Timing and funding arrangements for connecting the proposed tourism precinct will be included in exhibition material in draft format where required.

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

Consultation with relevant government agencies was a requirement of the Gateway Determination issued in relation to the grouped amendment for this site and the site at Oxley Highway Wauchope. Comments received in response to consultation undertaken consistent with the Determination did not raise any significant issues to be resolved.

Notwithstanding, renewed consultation is assumed with the Roads and Maritime Services, the NSW Rural Fire Service and the Office of Environment and Heritage.

Any comments provided by these or other relevant agencies will be considered and included in the planning proposal where necessary prior to public exhibition.

Part 4 – Community Consultation

Community consultation to involve the public and interested stakeholders consistent with section 57 of the EP&A Act and a Gateway Determination issued by the Minister is required.

In this respect, the proposal is inconsistent with the criteria for a low impact proposal and a 28-day exhibition period is proposed.

Appendix 1 – Existing Map Sheets

Appendix 2 - Site Identification Map

Appendix 3 - Replacement Maps Sheets **(Replacement map sheets will be inserted here prior to public participation in the Planning Proposal).**

Appendix 4 – Gateway Determination and Government and Agency Correspondence

(Copies of the Gateway Determination and other agency correspondence will be included here prior to public exhibition).

Appendix 5 – Voluntary Planning Agreement (Draft)

[If required in relation to the provisions and funding of public infrastructure, a copy of the draft VPA will be included here prior to public exhibition]