

Port Macquarie Hastings LEP 2011 Amendment No 24 Cassegrain Winery Fernbank Creek

Proposal Title : Port Macquarie Hastings LEP 2011 Amendment No 24 Cassegrain Winery Fernbank Creek

Proposal Summary : Rezone land at Cassegrain Winery, Fernbank Creek Road, Fernbank Creek from RU1 Primary Production to part SP3 Tourist to facilitate the development of a tourist precinct and an environmental protection zone to preserve areas of residual vegetation.

PP Number : PP_2013_PORTM_006_00 Dop File No : 13/07573

Proposal Details

Date Planning Proposal Received :	01-May-2013	LGA covered :	Port Macquarie-Hastings
Region :	Northern	RPA :	Port Macquarie-Hastings Council
State Electorate :	PORT MACQUARIE	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street : Fernbank Creek Road

Suburb : Fernbank Creek City : Port Macquarie Postcode : 2444

Land Parcel : Lot 1 DP 318920, Lot 1 DP 222740, Lot 229 DP 754434 and Lots 53 and 54 DP 747427

DoP Planning Officer Contact Details

Contact Name : Denise Wright

Contact Number : 0266416603

Contact Email : denise.wright@planning.nsw.gov.au

RPA Contact Details

Contact Name : Leanne Fuller

Contact Number : 0265818674

Contact Email : leanne.fuller@pmhc.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Jim Clark

Contact Number : 0266416604

Contact Email : jim.clark@planning.nsw.gov.au

Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes

- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The planning proposal includes a Site Identification Map and a Draft Land Zoning Map for exhibition purposes. Mapping provided is adequate.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council suggests that a 28 day consultation period would be adequate noting that the proposal is inconsistent with the criteria for a low impact proposal. In this regard the proposal is consistent with the regional planning framework, is not a principal LEP, and does not reclassify public land. However provision of urban infrastructure services will be necessary. Council advice is that details of funding and timing arrangements for the connection of the proposed tourist precinct will be included in the material for public exhibition.**

Several studies to support the proposal and establish the extent of environmental protection boundaries, are currently being completed. Council notes that these studies will be available for public exhibition and that draft exhibition mapping will be reviewed and amended if necessary.

The proposed 28 day exhibition period is considered suitable.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal satisfies the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes.**
- 2. Providing a suitable explanation of the provisions proposed by the planning proposal to achieve the outcomes.**
- 3. Providing an adequate justification for the proposal.**
- 4. Providing a timeline - which suggests completion of the planning proposal in 7 months.**

Council has not requested delegation. Council's view is that it is unable to request

Consistency with strategic planning framework :

The land includes an existing tourist site and Council's view is that the proposed expansion is consistent with the strategic objectives for tourism provided in the approved Port Macquarie Urban Growth Management Strategy 2011. The Strategy is based on the Mid North Coast Regional Strategy.

Council has identified nine (9) 117 Directions and SEPP-Rural Lands as being relevant to the proposal. S117 Direction 4.1 Acid Sulfate Soils is also relevant as discussed below.

The Planning Proposal is consistent with all relevant s117 Directions and SEPP Rural Lands with the exception of Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection. These inconsistencies may be justified for the following reasons:

Direction 1.2 Rural Zones. Direction 1.2 provides that a planning proposal shall not rezone land from rural to residential or tourist, or contain provisions which will increase the permissible density of land within a rural zone. The planning proposal seeks to rezone the existing Cassegrain Winery development to part SP3 Tourist. Direction 1.2 provides that a planning proposal may be inconsistent with this direction if the provisions which are inconsistent are justified by a strategy, a study or a regional strategy or are of minor significance. Council considers the proposal involves ancillary development to the existing food and wine based rural tourist use of the land and is consistent with the strategic objectives for tourism provided in the approved Port Macquarie Urban Growth Management Strategy. Therefore the inconsistency of the planning proposal with the direction is justified by reasons of minor significance and by the relevant strategies.

Direction 1.5 Rural Lands provides that a planning proposal should not affect land within a rural or environmental protection zone or reduce the minimum lot size applying to land unless consistent with the Rural Planning Principles or Rural Subdivision Principles in SEPP (Rural Lands). The planning proposal seeks to rezone rural land for tourist use. The direction provides that a draft plan may be inconsistent with this direction if the land is identified in a strategy which considers the objectives of this direction and is approved by the Director General of the Department or the rezoning is of minor significance. In this case the proposal is considered of minor significance (upgrading an existing tourist area). The inconsistency of the proposal with the direction is therefore justified.

Direction 4.1 Acid Sulfate Soils (ASS) is relevant to the proposal. The direction provides that a planning proposal shall not permit the intensification of land containing ASS unless a study of the land assessing its suitability has been conducted. The draft plan proposes to rezone land from RU1 Primary Production to SP3 Tourist and an appropriate environmental protection zone. The land contains class 2 and class 5 ASS. It appears that these soils are located within the area proposed for environmental protection zoning, although the extent of this zoning is yet to be determined. It is considered that the existing ASS provisions in the Port Macquarie LEP are sufficient to address any issues that may arise at development application stage. The inconsistency of the planning proposal with the direction is therefore considered to be of minor significance.

4.3 Flood Prone Land - is relevant as the proposal alters a provision affecting flood prone land at Fernbank Creek. The Direction provides that a Planning Proposal may be inconsistent with the Direction if a flood risk management plan has been prepared or the provisions of the Planning Proposal that are inconsistent are of minor significance. The Flood Planning Maps of the Port Macquarie Hastings LEP 2011 identify the 'flood planning area' subject to LEP Clause 7.3 Flood planning which requires consideration of potential flood impacts both on and off the subject land. Most of the development footprint is above the 1% AEP level but some is within the Flood Planning Area. The provisions of the LEP require future residential and ancillary development to be commensurate with the flood hazard and have regard for management of the flood risk. The inconsistency with Direction 4.3 is considered to be justified as being of minor significance.

Direction 4.4 Planning for Bushfire Protection applies as the land is mapped as bushfire prone land. A bushfire assessment will be submitted to Council shortly. Council is

Revised Planning Proposal for Fernbank Creek _April 2013.pdf	Proposal	Yes
Port Macquarie Hastings LEP 2011 Amendment No 24 Planning Proposal Covering Letter.pdf	Proposal Covering Letter	Yes
Draft Land Zoning Map Amendment No 24.pdf	Map	No
Site Identification Map Amendment No 24.pdf	Map	Yes
Port Macquarie Hastings Council Timeline Amendment No 24.pdf	Proposal	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information : It is Recommended that:

1. The planning proposal should proceed as a 'minor' planning proposal.
2. A community consultation period of 28 days is necessary.
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Office of Environment and Heritage
 - NSW Rural Fire Service
 - Transport for NSW - Roads and Maritime Services
4. The planning proposal is to be completed in 12 months.
5. The Director General's delegate agree that the inconsistencies with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified as of minor significance.
6. The Director General note that the inconsistency with Direction 4.4 Planning for Bushfire Protection will be resolved through consultation with the NSW Rural Fire Service before or during exhibition.
7. Delegation to finalise the planning proposal be issued to the Council.

Supporting Reasons : The reasons for conditions to the Gateway Determination are as follows:

1. The proposed tourist related development of the land and protection of areas of important native vegetation, will result in a net community benefit.
2. The inconsistencies of the proposal with the S117 Directions are of minor significance.
3. The proposal is otherwise consistent with all relevant local and regional planning strategies, section 117 Directions and SEPPs.