

Planning Proposal under section 55 of the EP&A Act

Port Macquarie-Hastings LEP 2011 (Amendment No 23)

Existing Holdings LEP - Amendment to Clause 4.2A (PMH LEP 2011)

Ccl ref: PP2013.005.0001

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Date: February 2013



**PORT MACQUARIE
HASTINGS**

Planning Proposal status (for this copy)

Stage	Version Date (blank until achieved)
Reported to Council (section 55)	20 February 2013
Adopted by Council & referred to Dept of Planning (sec 56 (1))	
Gateway Panel determination (sec 56 (2))	
Revisions required: Yes / No . Completed	20 March 2013
Public Exhibition (where applicable) (sec 57)	
For Council review (sec 58 (1))	
Adopted by Council for final submission to Dept of Planning (sec 58 (2))	

Council reference: PP2013.5.1

Port Macquarie-Hastings LEP 2011 (Amendment No 23)

Department of Planning & Infrastructure reference: To be Advised

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Adoption of the Planning Proposal

1. For initial Gateway determination

This Planning Proposal was endorsed for initial submission to the Regional Office of the Department of Planning and Infrastructure for a Gateway Determination on 25 March 2013 by the undersigned Council delegate:

Signed



Name Peter Cameron

Position Group 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 as applicable)

Signed

Name

Position

Executive Summary

Content

The Planning proposal describes proposed amendments to the *Port Macquarie Local Environmental Plan 2011 Clause 4.2A (4)* relating to 'Existing Holdings'.

The Port Macquarie-Hastings LEP 2011 came into effect on the 23 February 2011. The Plan is in the new 'Standard LEP' format mandated by the State Government to provide consistency of plans across the State.

Clause 4.2A of the Port Macquarie-Hastings Local Environmental Plan 2011 sets out provisions for erection of dwelling houses and attached dual occupancies on a vacant lot in certain rural and environmental protection zones. The clause carries over dwelling eligibility provisions from *Hastings LEP 2001*, and includes a sunset provision for longstanding 'existing holdings'. The sunset provision in 4.2A (4) ended on 23 February 2013.

'Existing holding' means land that was a holding (a historic clustering of one or more lots in single ownership) as at 26 May 1967, and is a holding at the time the application for development consent is lodged, (whether or not there has been a change in the ownership of the holding since 26 May 1967), and includes any other land adjoining land acquired by the owner since 26 May 1967.

Council at its Ordinary Meeting held 20 February reviewed its position in relation to the sunset period for "existing holdings" and endorsed preparation and submission of a Planning Proposal to the Department of Planning and Infrastructure requesting:-

- A Gateway Determination pursuant to section 56 of the *Environmental Planning and Assessment Act, 1979* to Clause 4.2A (4).
- Authorisation to make the plan pursuant to section 59 of the EP& A Act, 1979. It is intended that the delegation extend to the General Manager.
- that the planning proposal be expedited consistent with section 73A Expedited Amendments on the basis that the planning proposal addresses a machinery LEP matter, and will not have significant adverse impact on the environment

The Planning Proposal seeks to amend clause 4.2A (4) to extend the sunset provisions for 'Existing Holdings' from two (2) years after the commencement date of the *Port Macquarie-Hastings Local Environmental Plan 2011* to four (4) years after the commencement date.

The Planning Proposal contains statements in relation to the intended changes to the LEP and an explanation of provisions that are to be included in the proposed instrument.

Typically, 'Existing Holdings' comprise one or more *Parish Portions* or old scheme titles and the associated dwelling eligibility is dependent on whether or not the holding has been retained as it was at 26 May 1967. If one or more of the lots comprising the existing holding has been subsequently sold off, transferred or aggregated with adjoining land, the holding is no longer valid and the dwelling eligibility for the land will be based on the minimum lot size shown on the relevant Lot Size Map for the land.

The inclusion of 'existing holdings' provisions has regard to matters including:

- the age of the existing holdings provisions,
- the estimated small number of holdings which retain dwelling eligibilities due to 'existing holding' provisions alone, and
- the administrative complexity of the 'Existing holding' provisions.

The sunset period has no effect on dwellings eligibilities based on the minimum lot size for the land shown on the Lot Size Map. The lapsing of the 'Existing Holding' provisions is only relevant for any existing holdings which are below the minimum lot size for dwellings in the relevant zone shown on the Lot Size Map for the land.

Council has resolved to request expedition of the process, and the planning proposal is generally consistent with the Evaluation Criteria for 73A matters. Dispensation in relation to all or part of the process is requested.

It is proposed that that the Planning Proposal will be supplemented with a plain English Executive Summary, explaining the proposed provisions and their effect for public exhibition.

Further information

Please contact Leanne Fuller on phone 6581 8674.

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Planning Proposal

This is a Planning Proposal 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*. It will be assessed by Port Macquarie-Hastings Council, the NSW Department of Planning and Infrastructure, and (depending on the Gateway determination) used for public participation in the proposed LEP amendment.

Port Macquarie Hastings Council is the relevant planning authority pursuant to section 54 of the EP&A Act, 1979.

The Council is seeking authorisation to make the plan and, in accordance with the advice from the Department of Planning and Infrastructure in relation to delegations, it is proposed that the delegation be exercised by the General Manager. Council has also resolved to seek an expedited process pursuant to section 78A of the *Environmental Planning and Assessment Act, 1979*.

Further to Council's decision to prepare the planning proposal, significant interest in 'existing holdings' eligibilities has been generated, which may be relevant to the proposed expedition of the planning proposal.

Background

Proposal	To amend <i>Port Macquarie Hastings Local Environmental Plan 2011 Clause 4.2A (4)</i> to extend the sunset provisions for 'Existing holdings' from two (2) years from the date of commencement of the Plan to four (4) years from the date of commencement of the Plan
Property Details	Not site-specific. Clause 4.2A applies to certain rural and environmental protection zones. The proposed amendment does not change the application of the clause.
Applicant Details	Port Macquarie-Hastings Council
Brief history	The Port Macquarie-Hastings LEP 2011 came into effect on the 23 February 2011. The Plan is in the new 'Standard LEP' format mandated by the State Government to provide consistency of plans across the State. Clause 4.2A of the Port Macquarie-Hastings Local Environmental Plan 2011 sets out provisions for erection of dwelling houses and attached dual occupancies on a vacant lot in certain rural and environmental protection zones. The clause carries over dwelling eligibility provisions from <i>Hastings LEP 2001</i>, and includes a sunset provision for longstanding 'existing holdings'. The sunset provision in 4.2A (4) will end on 23 February 2013. As a result of recent submissions in relation to lapsing of the complex 'existing holding' provisions, Council has resolved to extend the timeframe for landowners to act on long standing eligibilities from two to four years after the date of commencement of the Port Macquarie Hastings LEP 2011. The effect of the amendment will mean the sunset provisions will lapse on 23 February 2015.

Part 1 - Objectives or Intended Outcomes

It is intended to amend Port Macquarie Hastings Local Environmental Plan 2011 to extend the sunset provisions for 'existing holdings' from two years after commencement of the Plan to four (4) years after the commencement of the Plan to allow landowners additional time to act on long standing dwelling eligibilities for 'existing holdings' dating back to 1967.

Part 2 - Explanation of Provisions

The purpose of the Planning proposal is to amend Clause 4.2A (4) of the *Port Macquarie Hastings Local Environmental Plan 2011*.

Clause 4.2A sets out provisions for erection of dwelling houses and attached dual occupancies on a vacant lot in certain rural and environmental protection zones, including minimum lot size requirements, transitional dwelling eligibilities relating to certain approved subdivisions, eligibilities for 'existing holdings' and other specified dwelling opportunities.

The amendment addresses a two year sunset provision for 'existing holdings' which will come into effect on 23 February 2013.

An extract of Clause 4.2A is shown below:

- (3) *Development consent must not be granted for development to which this clause applies, on land on which no dwelling house or dual occupancy (attached) has been erected, unless the land is:*
- (a) *a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or*
 - (b) *a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) was permissible immediately before that commencement, or*
 - (c) *a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) would have been permissible if the plan of subdivision had been registered before that commencement, or*
 - (d) *an existing holding, or*
 - (e) *within a lot identified as "Dwelling opportunity" on the Dwelling Opportunity Map, but only if no other dwelling or dual occupancy is erected on that lot.*

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (4) *Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land before 2 years after the commencement date of this Plan.*

Under the LEP an *existing holding* means land that:

- a) was a *holding* on 26 May 1967, and

- b) Is a *holding* at the time the application for development consent is lodged, whether or not there has been a change in the ownership of the *holding* since 26 May 1967, and includes any other land adjoining that land acquired by the owner since 26 May 1967.

Note: A *holding* means all adjoining land, even if separated by a road or railway, held by the same person or persons. For an *Existing* holding entitlement to be valid the holding must contain the allotment or allotments as they were at 26 May 1967.

To extend the sunset provisions it will be necessary to amend Port Macquarie Hastings LEP 2011 subclause (4) to read:-

- (4) *Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land before 4 years after the commencement date of this Plan.*

The previous sunset period lapsed on 23 February 2013.

As a result, Council is no longer approve dwellings on vacant rural land using the 'Existing holdings' provisions in clause 4.2A. Dwellings continue to be permissible on certain rural land based on the minimum lot size for the land shown on the Lot Size Map.

Changes to Port Macquarie-Hastings Local Environmental Plan 2011 Map Series are not required.

Part 3 – Justification

A - Need for the planning proposal.

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

The Planning Proposal is not the result of any strategic study or report. Instead, it has arisen as a result of landowner submissions requesting review of the sunset provisions for existing holdings.

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

There is no other statutory mechanism to give effect to the intended map amendment.

B - Relationship to strategic planning framework.

3. Is the planning proposal consistent with the objectives and actions of the Mid North Coast Regional Strategy 2006-31?

The planning proposal is consistent with the objectives and actions contained within the *Mid North Coast Regional Strategy 2006-31* and within the Mid North Coast Farmland Mapping Project. Phasing out of existing holding provisions is consistent with the rural planning principles for NSW.

4. Is the planning proposal consistent with Council's Community Strategic Plan and Urban Growth Management Strategy 2010 – 2031?

The planning proposal is not inconsistent with Council's *Community Strategic Plan* and *Urban Growth Management Strategy 2010-31*.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

SEPP Rural Lands

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

The relevant section 117 directions include:

Direction 1.2 Rural Zones and Direction 1.5 Rural Lands: The Planning Proposal is consistent.

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?

The proposed instrument will not have any adverse environmental impact.

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

None envisaged.

9. How has the planning proposal adequately addressed any social and economic effects?

Given the small number of existing holdings that may remain, it is considered unlikely that there is any significant economic and social impact associated with phasing out of existing holding provisions through an extended sunset period.

D - State and Commonwealth Interests.

10. Is there adequate public infrastructure for the planning proposal?

Public infrastructure will not be adversely affected by the proposed amendment.

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

External consultation with government agencies is not considered necessary. The proposal is a machinery LEP matter only.

Part 4 – Mapping

A - Affected land

Clause 4.2A applies to certain rural and environmental protection zones.

A Site Identification Map (SID) is not considered necessary. The Planning proposal involves a minor text amendment only.

B - Comparison of before and after

Not relevant for this proposal.

C - Draft LEP maps

Not Site specific. No changes to map sheets

Part 5 – Community Consultation

Council proposes that the amendment is expedited consistent with section 73A Expedited Amendments on the basis that the proposed planning proposal addresses a machinery LEP matter and will not have a significant adverse impact on the environment. The proposal is considered to satisfy the criteria for an expedited Amendment, as it:

- addresses a matter in the principle LEP which is a machinery matter
- is of a minor nature,
- is a matter that does not warrant compliance with the conditions precedent to the making of the instrument because it will not have any impact on the environment or adjoining land.

Council has taken reasonable measures to inform the community prior to the conclusion of the sunset period, including a six month advertising program leading up to the sunset to bring the change to the attention of landowners.

Subsequent to Council decision to prepare a planning proposal there has been further interest from the community in relation to this matter.

Part 6 – Project Timeline

This project timeline is based on anticipated dates and timeframes, including expedited exhibition, though there can be unexpected delays. Council requests delegation to carry out certain plan-making functions in relation to this proposal. Delegation would be exercised by Council's General Manager or the Director of Development and Environmental Services.

Anticipated dates	2013						2014											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
Commencement (date of Gateway determination)				X														
Timeframe for the completion of required technical information			NOT required															
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)			Not required															
Commencement and completion dates for public exhibition period				T B A														
Dates for public hearing (if required)				N A														

	2013													2014											
Anticipated dates	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
Timeframe for consideration of submissions				X	X																				
Timeframe for the consideration of a proposal post exhibition				X	X																				
Date of submission to the department to finalise the LEP				X	X																				
Date Council will make the plan (if delegated)					X																				
Date Council will forward to the department for notification.					X																				

Appendix A – Gateway Determination

A copy of the Gateway Determination for this Planning Proposal will be included in this Appendix after it is issued.

The Determination will identify processing requirements, such as:

- community consultation, or
- possible changes to this proposal.

At the time of preparation of this version of the planning proposal there has been no Gateway Determination.

Appendix B – List of proposed amendments

A. Changes to text (Clause 4.2A is shown below in full. Note that the proposed amendment to subclause (4) only)

Provision	Changes
4.2A Erection of dwelling houses and dual occupancies in certain rural and environmental protection zones	(1) The objectives of this clause are as follows: (a) to minimise unplanned rural residential development, (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones. (2) This clause applies to development for the purposes of dwelling houses or dual occupancies (attached) on land in the following zones: (a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone RU6 Transition, (d) Zone E3 Environmental Management, (e) Zone E4 Environmental Living. (3) Development consent must not be granted for development to which this clause applies, on land on which no dwelling house or dual occupancy (attached) has been erected, unless the land is: (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or (b) a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) was permissible immediately before that commencement, or (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) would have been permissible if the plan of subdivision had been registered before that commencement, or (d) an existing holding, or (e) within a lot identified as "Dwelling opportunity" on the Dwelling Opportunity Map, but only if no other dwelling or dual occupancy is erected on that lot. Note. A dwelling cannot be erected on a lot created under clause 9 of <i>State Environmental Planning Policy (Rural Lands) 2008</i> or clause 4.2. (4) Land ceases to be an existing holding for the purposes of subclause (3) (d) if an application for development consent referred to in that subclause is not made in relation to that land before 2 years 4 years after the commencement date of this Plan. Port Macquarie-Hastings LEP 2011 – text as at 7/01/2013 This is not a certified copy. Page 47 21/03/2013 (5) Despite subclause (3), development consent may be granted for development to which this clause applies if: (a) there is a lawfully erected dwelling house or dual occupancy (attached) on the land and the dwelling house to be erected is intended only to replace the existing dwelling house or dual occupancy (attached), or (b) the land would have been a lot referred to in subclause (3) had it not been affected by: (i) a minor realignment of its boundaries that did not create an additional lot, or

Provision	Changes
	(ii) a subdivision creating or widening a public road or public reserve or for another public purpose. (6) In this clause: existing holding means land that: (a) was a holding on 26 May 1967, and (b) is a holding at the time the application for development consent referred to in subclause (3) is lodged, whether or not there has been a change in the ownership of the holding since 26 May 1967, and includes any other land adjoining that land acquired by the owner since 26 May 1967. holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Exhibition information {To be completed prior to Exhibition}

Content

Proposed amendments to Local Environmental Plans are exhibited in a descriptive form within a "Planning Proposal".

Details of the proposed amendments to the Port Macquarie Hastings Local Environmental Plan 2011 are contained in this **Planning Proposal PP2013-0005**.

The Planning Proposal is not site-specific. The proposed amendments involve changes to the LEP text.

The "Gateway Determination" from the NSW Department of Planning and Infrastructure, relating to this Planning Proposal, is included at **Appendix A**.

Exhibition

The exhibition period is from {date} to {date}, with the Planning Proposal available for inspection by any person at Council's offices at Port Macquarie, Laurieton and Wauchope.

Submissions

Any person may make a written submission to Council up until the end of the exhibition period.

The submission should quote Council's reference - PP2013.6.1, and be emailed to

council@pmhc.nsw.gov.au

or posted to

The General Manager,
Port Macquarie-Hastings Council,
PO Box 84,
PORT MACQUARIE NSW 2444.

Note that any submission may be made public.

Section 147 (5) of the *Environmental Planning and Assessment Act 1979* states in part:

"A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of that council,
- (b) all gifts made to any local councillor or employee of that council."

If further information or forms are required, ask Council's Customer Service staff.

Further information

Please contact {name} on phone 6581 {ext #}.