

Amendment No 12 to Port Macquarie Hastings LEP 2011 to Rezone Land at Fernbank Creek Port Macquarie and Oxley Highway West Wauchope

Proposal Title : **Amendment No 12 to Port Macquarie Hastings LEP 2011 to Rezone Land at Fernbank Creek Port Macquarie and Oxley Highway West Wauchope**

Proposal Summary : **Planning Proposal to rezone land at Fernbank Creek, Port Macquarie (Site 1) for tourist, environmental conservation and protection purposes and land at Yippen Creek, West Wauchope (Site 2) for residential use. The proposal will involve amendment to the relevant Port Macquarie Hastings LEP 2011 Land Zoning, Lot Size, Floor Space Ratio and Height of Buildings Map Sheets.**

PP Number : **PP_2012_PORTM_006_00** Dop File No : **12/14440**

Proposal Details

Date Planning Proposal Received : **06-Sep-2012** 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 and Pacific Highway**

Suburb : **Fernbank Creek** City : **Port Macquarie** Postcode : **2444**

Land Parcel : **Lot 1 DP 222740, Lot 229 DP 754434 and Lot 1 DP 318920**

Street : **Oxley Highway**

Suburb : **Yippen Creek** City : **West Wauchope** Postcode : **2446**

Land Parcel : **Part of Lot 2 DP 1036844**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Jim Clark**

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Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha)		Type of Release (eg Residential / Employment land) :	Both
No. of Lots :	26	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :			

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The objectives and intended outcomes of the Planning Proposal are adequately expressed for the proposed amendment to Port Macquarie Hastings LEP 2011

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The Planning Proposal provides a clear explanation of the intended provisions to achieve the objectives and intended outcomes

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? Yes

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones
1.5 Rural Lands
2.3 Heritage Conservation
3.1 Residential Zones
3.4 Integrating Land Use and Transport

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- 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 : **Mapping is provided to identify the land. Draft amending Land Zoning, Lot Size, Floor Space Ratio and Height of Buildings Map Sheets are provided. The mapping is suitable for exhibition purposes.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The RPA suggests a 28 day consultation period would be adequate. The proposal is consistent with the regional planning framework, presents no issues with regard to infrastructure provision, is not a principal LEP, and does not reclassify public land. The proposed 28 day exhibition period is therefore 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 :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Port Macquarie LEP 2011 published in February 2011.**

Assessment Criteria

Need for planning proposal : **SITE 1 at the corner of the Pacific Highway and Fernbank Creek Road is developed as the Cassegrain Winery (food and wine based rural tourism) and has a total area of 38ha. It has been established for about 15 years. Council notes that this area is one of only two clearly recognisable rural tourist precincts in the LGA which is suitable for investigation as a**

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dedicated specialist tourist precinct ancillary to the existing development. The proposed zoning of the site is from RU1 Primary Production to part SP3 Tourist with residual vegetation on the site proposed as either E2 Environmental Protection or E3 Environmental Conservation.

An amendment to the LEP is the only means for achieving the objectives of permitting a specialist tourism precinct at the subject site, continuing the tourist related opportunities and appropriate protection of native vegetation.

The Planning Proposal identifies a net community benefit with the opportunity to to secure an important local tourism precinct and protect and manage environmentally sensitive areas of the site for benefit of the local community.

Council advice is that a range of specialist studies are required prior to the proposal proceeding to public exhibition, including:

Site Survey
Cultural and Archaeological Heritage Assessment
Ecological Assessment
Bushfire Assessment
Access, Traffic and Movement Assessment
Servicing Strategy
Geotechnical and Wastewater Assessment

At this time the work has not commenced.

The Department discussed with Council the practicality of the current Grouped Amendment and to ascertain whether Council wished to proceed with Site 1 and 2 as separate planning proposals. It is noted that Site 1 and Site 2 are contained on separate Map Sheets and there is no real benefit to be gained in processing as one planning proposal. However Council declined to alter the current planning proposal noting that consideration would be given to splitting the items if there was to be a significant delay.

SITE 2 adjoining the Oxley Highway at Yippen Creek, within the West Wauchope Urban Release Area. The site is a small flood free area of land adjoining the existing R1 General Residential Zone.

An amendment to the LEP is the only means of achieving the objectives of permitting residential use of the site.

The Planning Proposal identifies a net community benefit with the provision of additional land supply and low density housing opportunities and economic benefits to the community.

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Consistency with
strategic planning
framework :

Site 1 is an existing tourist site and Council's view is that the proposed ancillary 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.

Site 2 is part of a larger area identified for future urban growth in the Port Macquarie Hastings Urban Growth Management Strategy. The proposal is to extend the existing urban footprint over a small area of land to supply infill, low impact, low density housing opportunities (about 26 lots).

Council has identified ten (10) 117 Directions and SEPP-Rural Lands as being relevant to the proposal.

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. Site 1 of the planning proposal seeks to rezone the existing Cassegrain Winery development to part SP2 Tourist and Site 2 involves rezoning of a small area of land from rural to residential. 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 for Site 1 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. Site 2 involves land located within a proposed future urban release area as identified by the MNCRS. 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 (Site 1) and urban use (Site 2). 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) or is land identified as a proposed future urban release area in the MNCRS. The inconsistency of the proposal with the direction is therefore justified.

4.3 Flood Prone Land - is relevant as the proposal alters a provision affecting flood prone land at Fernbank Creek (Site 1). 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 partially 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.

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Direction 4.4 Planning for Bushfire Protection applies as the land is mapped as bushfire prone land. A Bushfire Hazard Assessment has been prepared to support the Site 2 proposal in accordance with the Planning for Bushfire Protection Guidelines and identifies mitigation measures to be implemented on the land. A bushfire assessment is yet to be provided for Site 1. Council is required to consult with the NSW Rural Fire Service and the proposal remains inconsistent with the Direction until this occurs.

Environmental social
economic impacts :

The proposed zoning of the existing Cassegrain Winery rural tourist operation supports the continued use of the site and development of a specialised tourism precinct.

The planning proposal will provide appropriate protection and management zoning to land containing native vegetation on Site 1 and provides important social and economic benefits.

The provision of additional housing at Site 2, in proximity to the Wauchope urban area, provides a positive social and economic impact within the community. There are no significant environmental issues identified to impact on the proposal or future residential use of the site.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **DG**

Public Authority Consultation - 56(2)(d) **Office of Environment and Heritage
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
PP2011-0009 s56 Submission.pdf	Proposal	Yes
Am 12 Site ID Sheet 010B 20120815.pdf	Map	Yes

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Am 12 Site ID Sheet 013C 20120815.pdf	Map	Yes
6380_COM_LZN_010B_020_20120815.pdf	Map	No
6380_COM_LZN_013C_020_20120815.pdf	Map	No
6380_COM_FSR_010B_020_20120815.pdf	Map	No
6380_COM_HOB_010B_020_20120815.pdf	Map	No
6380_COM_LSZ_010B_020_20120815.pdf	Map	No
PMHC Covering Letter Amendment No 12.pdf	Proposal Covering Letter	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
 - 3.1 Residential Zones
 - 3.4 Integrating Land Use and Transport
 - 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 proceed as a minor planning proposal.
2. the Director General agree that inconsistencies with S.117 Directions 1.2 Rural Zones and 1.5 Rural Lands are justified as of minor significance;
3. the Director General note that the inconsistency with Direction 4.4 Planning for Bushfire Protection will be justified when Council consults with the Rural Fire Service.
4. 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
 - Roads and Maritime Services

Each public authority is to be provided with a copy of the planning proposal, and any relevant supporting material; in particular each authority should receive a copy of the specific technical study that relates to the authorities area of interest. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
5. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal must be made publicly available for 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).
6. The timeframe for completing the LEP is to be 12 months from the week following the date of the gateway determination.

Supporting Reasons : The reasons for the above recommendation for Site 1 and Site 2 are as follows:

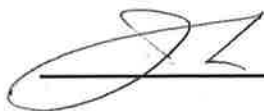
1. The proposal will secure an important local tourism precinct and protect and manage

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environmentally sensitive areas of the site for benefit of the local community

2. The proposed residential use of the land is consistent with all relevant local and regional planning strategies

Signature: _____



Printed Name: _____

J M CLARK

Date: _____

13 September 2012