

Port Macquarie Hastings LEP 2011 - Rezoning of land for residential and environmental purposes in the Lincoln Road, Castle Court and Marian Drive area of Port Macquarie

Proposal Title : Port Macquarie Hastings LEP 2011 - Rezoning of land for residential and environmental purposes in the Lincoln Road, Castle Court and Marian Drive area of Port Macquarie

Proposal Summary : This Planning Proposal aims to rezone land in the Lincoln Road, Castle Court and Marian Drive area of Port Macquarie from RU1 Primary Production and E2 Environmental Conservation to R1 General Residential, E2 Environmental Conservation and E3 Environmental Management. It also proposes to amend the development provisions of the land relating to minimum lot sizes, height of buildings and floor space ratios.

PP Number : PP_2016_PORTM_005_00 **Dop File No :** 16/12597

Proposal Details

Date Planning Proposal Received : 20-Sep-2016 **LGA covered :** Port Macquarie-Hastings

Region : Northern **RPA :** Port Macquarie-Hastings Council

State Electorate : OXLEY **Section of the Act :** 55 - Planning Proposal

LEP Type : Spot Rezoning

Location Details

Street : Lincoln Road, Castle Court and Marian Drive

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

Land Parcel : Lot 1, DP 1066820 and Lot 34, DP 856163

DoP Planning Officer Contact Details

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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	1.90	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	8
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :	The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	The Northern Region has not met with any lobbyists in relation to this proposal, nor has the Northern Region been advised of any meeting between other Departmental Officers and lobbyists concerning the proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes : The site is located approximately 5 kilometres west of the Port Macquarie town centre. Lot 1 (32.38ha) is privately owned and currently zoned part RU1 Primary Production and part E2 Environmental Conservation. A dwelling with access off Lincoln Road is situated on the lot. The remainder of Lot 1 comprises wetland, endangered ecological communities and formerly cleared grazing land. Lot 34 (6,700m²) is owned by Council and currently zoned RU1 Primary Production. The lot is used for stormwater detention associated with existing residential development in the locality. Land adjacent to the southern fringe of the site is characterised by low and medium density residential housing.

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 the 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

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.3 Home Occupations

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

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 No 14—Coastal Wetlands

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

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 :

An assessment of the consistency of this Planning Proposal with the S117 Directions and SEPPs is addressed later in this report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Mapping has been provided in the Planning Proposal to illustrate the proposed amendments. These are considered adequate for public exhibition.

Prior to seeking a Parliamentary Counsel opinion for the Plan, LEP mapping prepared in accordance with the Department's technical mapping guidelines will need to be prepared

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Planning Proposal identifies a 28 day exhibition period. This is considered appropriate as the rezoning is located outside of the Mid North Coast Regional Strategy Urban Growth Area boundaries and partly involves Council owned land.

Additional Director General's requirements

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

If Yes, reasons :

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Overall adequacy of the proposal

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

If No, comment :

The Planning Proposal and accompanying documentation are considered to satisfy the adequacy criteria by:

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal;**
- 4. Outlining a proposed community consultation program; and**
- 5. Providing a project time line.**

Council has requested an authorisation to exercise its plan making delegations. As the Planning Proposal deals with matters of only local significance, it is considered appropriate that an authorisation to exercise plan making delegations be issued to Council.

The RPA has provided a project time line which estimates that the LEP will be ready for submission to the Department for notification in April 2017. To ensure an adequate period to complete the proposal a 9 month timeframe is recommended.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Port Macquarie Hastings LEP 2011 was made in February 2011.

Assessment Criteria

Need for planning proposal :

Council has identified the need for the proposal due to the significant public benefit that will result from the dedication to Council of 30ha of environmentally sensitivity land. The proposal is best way of ensuring adequate protection, rehabilitation and permanent conservation of the residue environmental lands, whilst allowing a minor expansion of the existing residential area onto the less sensitive areas of the site.

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Consistency with strategic planning framework :

REGIONAL STRATEGIES

While the proposed residential lands are located outside of the identified Urban Growth Area (UGA) boundaries of the Mid North Coast Regional Strategy (MNCRS), the proposal is considered to remain consistent with the MNCRS as minor variations to the UGAs are permitted subject to appropriate consideration of infrastructure / servicing, environmental constraints and natural resources, and the regional settlement hierarchy. In this regard a minor variation is supported and considered to be consistent with the MNCRS as the minor residential infill will have access to existing infrastructure and servicing, has catered appropriately for natural constraints and natural resources (refer to discussion below regarding SEPP 14) and is not inconsistent with the regional settlement hierarchy.

The exhibited draft North Coast Regional Growth Plan is also applicable. The proposal is consistent with the draft Regional Growth Plan as it will contribute towards providing sufficient housing supply to meet the demands of the growing North Coast population. This development can be considered a minor variation to the mapped urban growth area consistent with the provisions of the draft Plan.

LOCAL STRATEGIES

Council's Urban Growth Management Strategy 2010 – 2031 identifies that Council will continue to investigate opportunities for infill development across the LGA. This Planning Proposal is the outcome of this process and is therefore considered to be in accordance with the Urban Growth Management Strategy, which was endorsed by the NSW Department of Planning and Environment in May 2011.

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP 14 - COASTAL WETLANDS

The proposal seeks to zone the vast majority of the mapped SEPP 14 on the site as E2 Environmental Conservation or E3 Environmental Management which is considered appropriate. A very small area of the proposed Castle Court residential rezoning encroaches into the SEPP 14 wetland. Discussions with Council staff have confirmed they raise no objection to the Gateway requiring the residential zone in this location to be aligned with the mapped SEPP 14 boundary. This is considered appropriate to retain the integrity of the existing mapped wetland area.

SEPP 44 KOALA HABITAT PROTECTION

The ecological report determines that this land does not contain potential koala habitat.

SEPP 55 REMEDIATION OF LAND

A preliminary investigation of Lot 1 in accordance with the Contaminated Land Guidelines was undertaken. It was determined that the land was not contaminated. No investigation of Council's land that is included in the Castle Court infill footprint has however been undertaken. Council has advised that this investigation will be completed and the information included in the planning proposal prior to public exhibition.

SEPP (Rural Lands)

See discussion below regarding compliance with Section 117 Directions.

SECTION 117 DIRECTIONS

A number of S117 Directions apply to this Planning Proposal. The proposal is considered to be consistent with all relevant s117 Directions except in relation to the following:

1.2 Rural Zones

The proposal is inconsistent with this Direction as it seeks to rezone land from RU1 Primary Production to R1 General Residential. This inconsistency is considered to be of minor significance due to the small area of rural zoned land involved and as the land holds negligible agricultural potential.

1.5 Rural Lands

The proposal is inconsistent with this Direction as it is unable to comply with all of the rural planning and subdivision principles of SEPP (Rural Lands) 2008 as it seeks to rezone land

from RU1 Primary Production to R1 General Residential. This inconsistency is considered to be of minor significance due to the small area of rural zoned land involved and as the land holds negligible agricultural potential.

2.1 Environment Protection Zones

The proposal is inconsistent with this Direction as it seeks to rezone a small area (less than 0.2ha) of existing E2 zoned land to R1 General Residential adjoining Marian Drive. This inconsistency is considered to be of minor significance due to the degraded nature of the land involved, and the environmental benefit that will result from the overall net increase in E2 zoned land from the proposal, and the greater protection and rehabilitation that will occur from the 30ha of land being dedicated to the public for conservation purposes. It is also noted that the owner has given consent to the proposed application of E2 and E3 zones across the site over existing rural zoned land as part of the proposal.

3.6 Shooting Ranges

The proposal is inconsistent with this Direction as it seeks to rezone land adjacent to an existing shooting range for a more intensive land uses than that which are permitted under the existing zone. The inconsistency is considered to be of minor significance because the distance between the closest proposed infill residential area and the rifle range is 320m, which is no closer to the rifle range than existing housing in the locality. In addition, council has advised the topography and vegetation between the proposed infill areas and rifle range are significant and comprise approximately 30 ha of dense tall coastal paperbark swamp forest, with no direct line of sight. The dedication of the residue environmental lands to Council for conservation purposes will ensure retention of an adequate buffer to the rifle range into the future. Council has advised that prior to public exhibition, consultation with the NSW Police Firearms Registry as the relevant rifle range licensing body will be undertaken.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as the site contains Class 3 and 5 acid sulfate soils and an acid sulfate soils study as not yet been prepared. This inconsistency is considered to be of minor significance as this matter can be adequately addressed at development application stage as Port Macquarie-Hastings LEP 2011 contains appropriate provisions requiring the consideration of acid sulfate soils.

4.3 Flood Prone Land

The proposal is inconsistent with this Direction as it will permit an increase in the development potential of the land. While Council's Hastings River Flood Study (2006) indicates that the proposed residential infill areas are located mainly in areas designated as 'Flood Fringe' with a low to medium hazard category, and Council has advised that they are satisfied that the proposed filling to a minimum floor level of 4.1m AHD will have minimal impact on the flooding characteristics in the locality, it is considered appropriate that the inconsistency remain unresolved until after the Office of Environment and Heritage have had an opportunity to review and comment on the proposal.

4.4 Planning for Bushfire Protection

This Direction is relevant as the Planning Proposal will affect land that is identified as bushfire prone land. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

Environmental social
economic impacts :

FLORA AND FAUNA

Council mapping indicates that the site contains three endangered ecological communities (EECs). The majority of EECs are located within the residue of Lot 1 which is proposed to be dedicated to Council for ongoing environmental conservation. An Environmental Assessment report includes an assessment of EECs where they are impacted by the proposed residential infill areas. It is considered the impacts on the EECs are likely to be minimal due to their existing degraded state and will be offset by the environmental gains of dedication of the residue of Lot 1 to Council.

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An intact EEC at the rear of the proposed Lincoln Road residential area is proposed to be retained in an E2 Environmental Protection zone and managed in private ownership in accordance with a Vegetation Management Plan to be approved by Council. This is considered appropriate.

BUSHFIRE HAZARD

A Bushfire Hazard Assessment report (Oct 2015), indicates that the proposed building envelopes of the proposed new residential zoned land can achieve a 21m wide Asset Protection Zone to protect future development from bushfire hazard. Consultation with the NSW Rural Fire Service will be undertaken to ensure this is appropriate.

FLOODING

Council's Hastings River Flood Study (2006) indicates that the proposed residential infill areas are located mainly in areas designated as 'Flood Fringe' with a low to medium hazard category. Council has advised that the proponent has submitted information, to the satisfaction of Council staff, which demonstrates that filling these areas approximately 900 mm above the 1 in 100 year flood level (i.e. a minimum floor level of 4.1m AHD), will have minimal impact on the flooding characteristics in the locality. This is considered appropriate subject to consultation with OEH.

STORMWATER MANAGEMENT

One of the proposed residential areas is in the vicinity of a temporary stormwater basin which Council considers no longer necessary for future stormwater management purposes. Council has supported an alternative stormwater control solution that takes the existing drainage through to the rear of the proposed Marian Drive residential infill area. This will require the existing basin to be filled, under geotechnical supervision, and installation of the alternative system in accordance with the Stormwater Concept Plan that is included in the Planning Proposal. It is considered that the proposal will resolve existing stormwater management issues associated with development in the locality.

CULTURAL HERITAGE

The proponent has undertaken a search of the Aboriginal Heritage Information Management System and did not identify any recorded/declared Aboriginal sites or places on or within 200m of the site. Despite this Council has identified that consultation will be undertaken with the NSW Office of Environment and Heritage, the Birpai Aboriginal Land Council and the NSW Aboriginal Land Council, prior to public exhibition. This is considered appropriate.

Due to the small area of residential infill development consistent with adjacent residential development, any other social and economic impacts are expected to be negligible.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Essential Energy NSW Aboriginal Land Council Office of Environment and Heritage NSW Rural Fire Service Other		

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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
Cover Letter.pdf	Proposal Covering Letter	Yes
Planning Proposal.pdf	Proposal	Yes
Council Report.pdf	Proposal	Yes
Council meeting minutes.pdf	Proposal	Yes

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**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 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**

Additional Information : **It is recommended that:**

- 1. That the proposal be supported.**
- 2. Prior to agency consultation, the planning proposal shall be amended to**
 - a. amend the residential zone in Castle Court to align with the mapped SEPP wetland boundary, with the resulting residue of the mapped SEPP wetland to be zoned E3 Environmental Management; and**
 - b. include the outcomes from the land contamination assessment for the Council owned land.**
- 3. Prior to community consultation, consultation is required with the following public**

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authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:

- NSW Office of Environment and Heritage
- NSW Rural Fire Service
- Birpai Aboriginal Land Council
- NSW Aboriginal Land Council
- NSW Police Firearms Registry
- Department of Primary Industries - Lands
- Essential Energy
- Telstra

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:

- (a) the planning proposal must be made publicly available for a minimum of 28 days;
- (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 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2016).

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

8. That the Secretary's delegate determine that the inconsistencies with s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 3.6 Shooting Ranges and 4.1 Acid Sulfate Soils are justified as being of minor significance.

9. The Secretary's delegate note the outstanding inconsistency of the proposal with s117 Directions 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection.

10. That a written authorisation to exercise plan making delegations be issued Council.

Supporting Reasons :

The rezoning of the subject land will provide additional infill residential development adjoining an established residential area and provide for the conservation of significant environmentally constrained land.

Signature:



Printed Name:

Craig Diss

Date:

29/9/16