

SECTION 59 PLANNING REPORT

PLANNING PROPOSAL DETAILS:

Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 36)

DP&E reference: PP_2016_PORTM_003_00

Council reference: Council ref: DD2015-2.1

PLANNING PROPOSAL SUMMARY:

Rainbow Beach Precinct C Rezoning - St Vincent's Foundation
to rezone land and amend the development standards at Rainbow Beach Precinct C,
Lake Cathie-Bonny Hills.

DATE OF GATEWAY DETERMINATION:

2 September 2016

1. SUMMARY

Tag A

1.1 Rationale and purpose

The key objective of this planning proposal is to ensure the local environmental plan adequately reflects the concept plan approved by the State Government under the now repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (Part 3A approvals).

The proposed changes facilitate orderly and equitable development of the future village centre at Rainbow Beach and surrounding land by identifying suitable zones for business, medium density residential development, and public recreation.

In addition, suitable environmental zones are proposed to reflect the Part 3A project approval 07_0001 for an environmental corridor through the subject site to protect and sustainably manage local ecological biodiversity and the natural environment. Relevant development standards and controls are proposed to guide building height, bulk and scale and achieve a mix of lot sizes.

Potentially noise affected land is also identified to ensure an acceptable level of noise is provided within future housing.

1.2 Overview of proposed changes

The objective and intended outcomes are to be achieved by amending the *Port Macquarie-Hastings Local Environmental Plan 2011* Land Zoning Map, Floor Space Ratio Map, Lot Size Map, Height of Buildings Map, and Acoustic Controls Map relating to the subject area.

Further guidance on meeting the LEP controls have been incorporated into the Port Macquarie-Hastings Development Control Plan.

1.3 Key exhibition dates and main points in submissions

Public exhibition from 16 September 2016 to 14 October 2016, then from 18 January to 2 February in accordance with the revised Gateway determination issued 14 December 2016.

There was one submission made during the first public exhibition period and four during the second. The key points and Council responses are summarised in the attached report considered by Council on 15 March 2017.

1.4 Any key amendments to the planning proposal arising from public exhibition or agency consultation

As noted in the attached report considered by Council on 15 March 2017.

1.5 Other relevant background

A development application for a 702 lot subdivision within this area was approved by Council on 15 February 2017 (DA010.20165.00000465.001). The subdivision plan is consistent with the proposed zone changes.

2. GATEWAY DETERMINATION

Date Determination issued	2 September 2016, revised 14 December 2016
Timeframe for completion of proposal	12 months from the week following the date of the Gateway determination, i.e. 9 September 2017
Any review requests and the outcomes	N/A
Compliance with conditions included in the Gateway determination	Conditions complied with as follows: 1. Planning proposal amended as required prior to exhibition. 2. Carried out community consultation for 28 days (see attached report). 3. Sought comments from all listed public authorities (see section 4 below) 4. Made required amendments following first exhibition (see attached report). 5. Completed the LEP within the 12 month timeframe. 6. Carried out further community consultation of 14 days (see attached report).
Date of Written Authorisation to Exercise Delegation issued to Council for this proposal	2 September 2016

A copy of the Gateway determination **Tag C** is in the attached Planning Proposal **Tag B**.

3. COMMUNITY CONSULTATION

See attached report to Council dated 15 March 2017.

4. VIEWS OF PUBLIC AUTHORITIES

Which agencies were consulted	- Office of Environment and Heritage - NSW Rural Fire Service - NSW Roads and Maritime Service - Department of Industry - Lands - Department of Education and Training
Which agencies provided a response	- Office of Environment and Heritage - NSW Rural Fire Service

	• NSW Roads and Maritime Service • Department of Industry - Lands
What were the views of those agencies	NSW Roads and Maritime Service raised a concern regarding the funding arrangements for upgrade of State infrastructure, notably the intersection of the Pacific Highway and Houston Mitchell Drive, resulting from potential increased use due to the population growth accommodated by the proposed changes. No other agency views resulted in changes to the planning proposal. A summary of their comments and Council responses is included in the attached Council report.
How were any objections or issues resolved	The Part 3A concept decision documents were reviewed. The matter was found to have been considered as part of the Director General's decision making process. A change was made to the text on page 11 of the planning proposal consistent with the earlier approval.
Did agency consultation occur in accordance with the requirements of the Gateway determination	Yes
What amendments were made to the planning proposal to respond to the issues raised by agencies	As noted above

5. CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Refer to the Part 3.B of the attached Planning Proposal **Tag B**, for details of consistency with section 117 Directions, SEPPs and other strategic planning documents.

6. PARLIAMENTARY COUNSEL OPINION

Date Opinion sought	21 April 2017
Date Opinion given	13 July 2017

Copy of opinion **Tag PC** and draft legal instrument **Tag LEP** are attached.

7. OTHER RELEVANT MATTERS

Any representations from State or Federal members of Parliament	No
Has Council has met with the Minister in relation to the planning proposal	No
Any additional matters that are relevant considerations for the making of the plan	No

8. MAPPING

Within the attached Planning Proposal **Tag B**, are the associated:

- Site Identification Map,
- Map Cover Sheet **Tag Map**,
- Map sheets proposed for adoption.

9. ATTACHMENTS

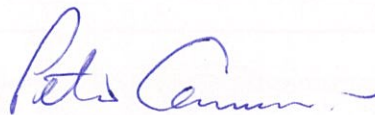
- A Parliamentary Counsel's opinion **Tag PC** and draft legal instrument **Tag LEP**.
- B Council Planning Proposal dated 14 July 2017 **Tag B**.
Of particular relevance are:
1. Part 3 – Justification — B - Relationship to strategic planning framework
 2. Appendix A – Gateway determination and revised determination **Tag C**
 3. Appendix C – Site Identification Map
 4. Appendix D – Map Cover Sheet 6380_COM_MCS_2017 **Tag Map** ⁰⁵²⁵
 5. Appendix E – Map sheets proposed for adoption

10. RECOMMENDATION

It is RECOMMENDED that the Director of Development and Environment, as delegate of the Minister:

- **note** Proposal Summary Report **Tag A**; the Planning Proposal **Tag B**; the Gateway Determination **Tag C**;
- **note** Parliamentary Counsel's Opinion that the draft LEP can be legally made and that no changes have been made to the draft LEP since obtaining this Opinion **Tag PC**;
- **make** the draft LEP under section 59(2)(a) of *Environmental Planning and Assessment Act 1979* ('EP&A Act'), by signing the instrument **Tag LEP** and supporting Map Cover Sheet **Tag Map** respectively; and
- **note** that the NSW Department of Planning and Environment will be advised that the plan has been made and requested to arrange for notification of the plan on the NSW Legislation website.

Signed



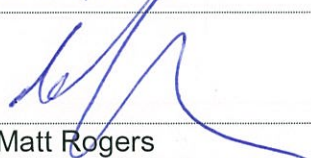
Position

Peter Cameron
Group Manager Strategic Land Use Planning
Port Macquarie-Hastings Council

Date

17-7-17

Approved by
Delegate



Position

Matt Rogers
Director, Development and Environment
Port Macquarie-Hastings Council
as authorised delegate for the Minister for Planning

Date

17/7/17

Notes:

The Minister has delegated the following plan-making powers to Council:

- a) to make – and determine not to make – an LEP under section 59(2), and (3) of the *Environmental Planning and Assessment Act 1979*,
- b) to defer inclusion of certain matters in an LEP under section 59(3) and
- c) to identify which matters must be considered and which stages of the plan-making process must be carried out again prior to resubmission (section 59(4)) if the council defers the proposal or if a matter is deferred from the LEP.

Delegation of the Minister's functions under section 59 of the Act to Council and any sub-delegates is **not available** where:

- a) Council has not received a Written Authorisation to Exercise Delegation for the specific Planning Proposal,
- b) There is an unresolved agency objection to the draft LEP,
- c) It relates to a 'suspension of covenants clause' under section 28 of the Act or that discharges interests in public land under section 30 of the *Local Government Act 1993*, or
- d) changes to a planning proposal (after exhibition whether as a result of community or agency comments) mean it is substantially different to what was authorised by the Gateway determination.



New South Wales

PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 36)

Your ref: PP 2016_PORTM_003_00 (16/11080)
Our ref: DG e2017-101.d03

In my opinion the attached draft environmental planning instrument may legally be made.

When the environmental planning instrument is made, a map cover sheet that lists the final form of the maps adopted by the instrument should be signed by the person making the instrument.

A handwritten signature in black ink, appearing to read 'D Colagiuri'.

(D COLAGIURI)
Parliamentary Counsel

12 July 2017



New South Wales

Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 36)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979.

Minister for Planning

17/7/17

MATTHEW RAKERS

DIRECTOR DEVELOPMENT & ENVIRONMENT

SIGNED UNDER DELEGATION FOR PORT MACQUARIE-HASTINGS COUNCIL
AS DELEGATE FOR THE MINISTER FOR PLANNING

Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 36)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No 36)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to Lot 5, DP 25886, Lots 1–4, DP 1150758, Lot 122, DP 1106943 and Lots 1 and 2, DP 1193553 (being part of the area known as Rainbow Beach).

4 Maps

The maps adopted by *Port Macquarie-Hastings Local Environmental Plan 2011* are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Plan.

**Port Macquarie-Hastings Local
Environmental Plan 2011
(Amendment No 36)**

Map Cover Sheet

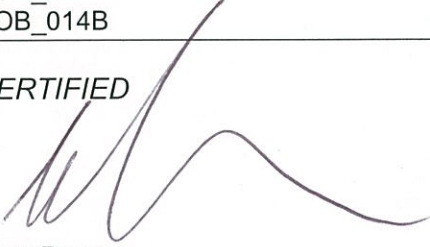
The following map sheets are revoked:

Land Zoning Map	
LZN_013E	6380_COM_LZN_013E_020_20120809
LZN_014B	6380_COM_LZN_014B_020_20170212
Lot Size Map	
LSZ_013E	6380_COM_LSZ_013E_020_20160628
LSZ_014B	6380_COM_LSZ_014B_020_20160628
Acoustic Controls Map	
CL1_013E	6380_COM_CL1_013E_020_20141209
Floor Space Ratio Map	
FSR_013E	6380_COM_FSR_013E_020_20111111
FSR_014B	6380_COM_FSR_014B_020_20110517
Height of Buildings Map	
HOB_013E	6380_COM_HOB_013E_020_20120809
HOB_014B	6380_COM_HOB_014B_020_20110519

The following map sheets are adopted:

Land Zoning Map	
LZN_013E	6380_COM_LZN_013E_020_20170420
LZN_014B	6380_COM_LZN_014B_020_20170420
Lot Size Map	
LSZ_013E	6380_COM_LSZ_013E_020_20170525
LSZ_014B	6380_COM_LSZ_014B_020_20170420
Acoustic Controls Map	
CL1_013E	6380_COM_CL1_013E_020_20170420
CL1_014B	6380_COM_CL1_014B_020_20170420
Floor Space Ratio Map	
FSR_013E	6380_COM_FSR_013E_020_20170525
FSR_014B	6380_COM_FSR_014B_020_20170420
Height of Buildings Map	
HOB_013E	6380_COM_HOB_013E_020_20170525
HOB_014B	6380_COM_HOB_014B_020_20170420

CERTIFIED


Matt Rogers
Director, Development and Environment
As delegate for the Minister for Planning and Infrastructure

[Date] 17/7/17

