

Boundary Realignment Provisions

Proposal Title : **Boundary Realignment Provisions**

Proposal Summary : **The planning proposal seeks to introduce new provisions to the Port Stephens Local Environmental Plan 2013 that would facilitate boundary realignments as either exempt development or as development requiring consent.**

PP Number : **PP_2015_PORTS_009_00** Dop File No : **15/16521**

Proposal Details

Date Proposal Lodged with DOP : **28-Oct-2015** Date Proposal Uploaded to Public Website : **30-Nov-2015**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **Office of Environment and Heritage
NSW Department of Primary Industries
- Agriculture**

Gateway Determination

Decision Date : **01-Dec-2015** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **08-Sep-2016**

Implementation

Implementation Start Date : **08-Dec-2015** Exhibition Duration : **16**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

Agency Objections : **No**

If Yes, comment :

Documentation consistent with Gateway : **Yes**

If No, comment :

CONSISTENCY WITH THE GATEWAY DETERMINATION

The Planning Proposal would allow boundary adjustments as either exempt development or with development consent, subject to certain criteria. The Planning Proposal was issued with a conditional Gateway determination by the Acting General Manager, Hunter and Central Coast Region on 1 December 2015. Plan-making delegation was not granted to Council for this Planning Proposal. All conditions of the Gateway determination have been met.

(Note: the exempt provision has not been included in the LEP amendment due to

a similar provision being included in the housekeeping amendment to the SEPP (Exempt and Complying Development Codes) 2008 which is soon to be finalised. As a result, the discussion in the following sections about Consultation, s117 directions and SEPPs refers only to the local clause component (ie where a boundary realignment requires consent). Further discussion about excluding the exempt provision is provided in the Post-exhibition Changes section below).

CONSULTATION

Community:

The Gateway determination required community consultation for 14 days. No public hearing was required. The Planning Proposal was exhibited from 11 February to 26 February 2016 and no submissions were received. A public hearing was not held.

Agencies:

Council consulted with OEH and DPI Ag as required by the Gateway determination. Council also consulted with Office of Water and Department of Industry (Resources and Energy). Summary responses and the Department's consideration of the matters raised is detailed below.

Office of Environment and Heritage - No objection. OEH noted that there are potential impacts from this proposal to biodiversity, Aboriginal cultural heritage, flooding and coastal processes but it considers there to be sufficient considerations to deal with these matters as they arise.

The Department considers that the matters identified by OEH would be considered by Council through the DA process under s79C. The clause (subclause 4f) requires impacts on environmental values of the land to be considered. Further, where land is zoned as having environmental protection values, the clause (subclause 3e) requires Council to specifically consider whether the proposal would result in the long term protection and maintenance of that land. Given this, the Department is satisfied that the matters identified by OEH would be adequately considered for the local clause component.

Department of Primary Industries (Agriculture) - No objection. DPI (Ag) recommended the clause be amended to ensure that the protection of water resources and access for agriculture is assessed when considering a boundary realignment proposal. It also suggested that realignment between RU1 or RU2 zoned land consider the guidelines for farm subdivision.

The Department notes that Council has amended the clause (subclause 4e) to reflect DPI (Ag) advice regarding water resources. No issue is raised with this change. The farm subdivision guide seeks to ensure farm subdivision occurs in a manner that minimises the fragmentation of agricultural land (and resulting land use conflict and productivity loss). The Department agrees with Council that the provisions of the clause (clauses 3 & 4) adequately address those matters.

Department of Primary Industries (Water) - No objection. Water advise that where existing dams are located on a lot subject to a boundary realignment, the resulting lot may have a dam greater than the Maximum Harvestable Right Dam Capacity and so a new licence may be required.

The Department agrees with Council that the need for a new licence would be the responsibility of the landowner. No change to the clause is required.

Department of Industry (Resources and Energy) - No objection. Resources and Energy note the proposal to be consistent with s117 direction 1.3 Mining,

Petroleum Production and Extractive Industries. It suggests that Council should refer to the Mineral Resource Audit which is a spatial tool that identifies the location and nature of mines so that it can be determined if a boundary realignment proposal is in proximity to a resource.

Council advises that this is a matter that will be considered as part of its DA assessment under s79C. The Department supports this approach.

POST-EXHIBITION CHANGES TO THE PLANNING PROPOSAL

The exempt development provision included in the final Planning Proposal has not been included in the draft LEP amendment. This occurred in consultation with Council. The clause was not included for a combination of reasons.

PC advised that the provision could only be facilitated as an amendment to the SEPP (Exempt and Complying Development Codes) 2008. The Codes SEPP team subsequently advised that this change could potentially be facilitated as part of a future housekeeping amendment to the SEPP (work possibly starting 2017).

Notwithstanding, the Codes SEPP team also advised that the existing housekeeping SEPP amendment is close to finalisation and that it would update the existing exempt provision in the SEPP for boundary realignments. It is understood that the SEPP's existing requirement that a lot with an area less than the minimum lot size may only increase in size following a boundary realignment is to be removed.

As the primary purpose of Council's exempt provision was to provide a similar outcome, Council's provision would become largely redundant. Given this, Council has advised the Department that its exempt provision does not need to proceed at this time, and that its proposed exempt provision may be considered as part of the future housekeeping amendment to the SEPP.

The Department considers that this post-exhibition change does not warrant re-exhibition. The PP effectively introduces two new policies relating to boundary realignment subdivisions. The discontinuation of one proposed policy (the exempt provision) does not require re-exhibition because not progressing it maintains the status quo. Further, it is noted that a similar provision (via the SEPP) is imminent.

In addition, while both provisions relate to boundary realignments, the local clause provision is independent of the exempt provision. The suspension of the exempt provision therefore does not affect the local clause component. Council has confirmed that the change to the local clause made at the suggestion of DPI (Ag) was made prior to public exhibition. For these reasons, re-exhibition of the local clause component is not required.

SECTION 117 DIRECTIONS

The assessment for Gateway identified s117 directions 1.5 Rural Lands, 2.1 Environment Protection Zones and 5.1 Implementation of Regional Strategies as requiring agency consultation to occur before consistency could be determined. The Department's final consistency assessment is below.

1.5 Rural Lands - the PP was identified as being potentially inconsistent with this direction because it may be inconsistent with the Rural Lands SEPP subdivision principles (clause 5 of the direction). Consultation with DPI (Ag) has occurred and no concerns were raised. The matters identified by DPI (Ag) have been adequately addressed. The provisions of the clause should ensure that boundary realignment subdivisions are consistent with the rural subdivision principles of the

SEPP. The PP is considered to be consistent with this direction.

2.1 Environment Protection Zones - the PP was identified as being potentially inconsistent with this direction because the PP may undermine the environment protection standards (lot size) that apply to environmentally zoned land (clause 5). Consultation with OEH has occurred and OEH is of the view that environmental matters can be given adequate consideration through the provisions of the clause. The PP is considered to be consistent with this direction.

5.1 Implementation of Regional Strategies - the PP was identified as being potentially inconsistent with this direction because the PP may be inconsistent with the LHRS (clause 4). Concerns regarding the LHRS related to whether strategy outcomes about protecting high value agricultural and environmental land may be undermined by the PP. Consultation with State agencies have occurred and no objections have been raised. The clause requires the relevant matters to be considered at the DA stage. The Department considers the proposal to be consistent with this direction.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

SEPP (Rural Lands) 2008 - Council has consulted with DPI and no objections were raised. Per the discussion for s117 direction 1.5, the PP is considered consistent with the relevant provisions of the SEPP.

MAKE THE PLAN

Legal drafting was requested 9 May 2016. A PC Opinion was issued on 21 September 2016. Substantial delays resulted from resolving whether the exempt provision should progress given PC's advice and the timing of the SEPP (Exempt and Complying Codes) 2008 housekeeping amendment. Council agreed to exclude the exempt provision from the draft LEP amendment on 26 August 2016. Council was consulted in accordance with s59(1) and accepted the draft LEP on 7 September 2016. The plan may now be finalised.

LEP Assessment

Date Received from RPA : **13-Apr-2016**

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : **08-Sep-2016**

Determination Date :

Determination Decision :

Notification Date :