

Boundary Realignments

Proposal Title : **Boundary Realignments**

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 Planning
Proposal Received : **28-Oct-2015**

LGA covered : **Port Stephens**

Region : **Hunter**

RPA : **Port Stephens Council**

State Electorate : **MAITLAND
PORT STEPHENS**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **The proposal would generally apply to land zoned RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry, R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living in the Port Stephens Local Government Area**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre :

Release Area Name :

Regional / Sub

Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings 0

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

Have there been No

meetings or

communications with

registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting

Notes :

PREVIOUS CONSIDERATION BY THE GATEWAY

This planning proposal formed part of Council's water storage facilities planning proposal (PP_2015_PORTS_003_00) considered by the Gateway in June 2015.

The Gateway conditioned that planning proposal to remove the boundary realignment component so that further justification and information in support of the boundary realignment provisions could be provided by Council.

While Council has provided further justification and refined the proposed provisions, the information contained in the PP remains substantially the same.

The Gateway suggested that Council consult with OEH and DPI prior to submitting a new planning proposal to the Gateway. This has not occurred.

External Supporting

Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment :

The Objectives adequately explain the intent of the planning proposal. They are consistent with the Department's "A guide to preparing planning proposals".

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

Is an explanation of provisions provided? Yes

Comment :

The Explanation of Provisions adequately explain the intended provisions of the planning proposal. They are consistent with the Department's "A guide to preparing planning proposals".

EXEMPT PROVISION

The proposed exempt provision in this planning proposal is basically the same provision

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as that submitted to the Gateway previously. The provisions generally mirror the Code SEPP exempt provisions for the circumstances where the SEPP can and cannot be used, but remove the restriction requiring lots already smaller than the minimum lot size to increase in size as a result of a boundary realignment. This approach aligns with the Department's recently exhibited changes to the Codes SEPP.

However, Council's proposed provision has further differences. The SEPP provides that boundary realignments in a rural or environmental zone only occur where a 'minor change' in the area of any lot is proposed. Minor is not defined in the SEPP but could be considered less than 10 %. Council's provision would allow up to a 15 % variation in area of at least one pre-existing lot:

"(ii) that will not create a resultant lot that is more than 15% different in area to at least one pre-existing lot"

Council has not provided justification for the 15 % variation or to the variation being measured against "at least one pre-existing lot". As worded the clause creates the potential for land use conflicts. For example, a 60 hectare lot adjoining a 9.5 hectare lot could undertake a boundary realignment which would result in a 69 hectare lot and a 0.5 hectare lot.

Council has also included the R5 Large Lot Residential zone in its exempt provision. The SEPP provisions stipulate that a maximum variation in area of 10 % is allowed for this zone.

While the regional team notes that the recently exhibited draft Codes SEPP amendment would make Council's provision redundant, it is considered that this element of the PP can proceed because the timing of the SEPP amendment is not known. Should the SEPP amendment be finalised before this PP, then this element of the PP would not need to proceed to finalisation.

LOCAL PROVISION

The proposed local provision is basically the same provision as that submitted to the Gateway previously. It would apply to Council's rural and environmental zones, as well as the R5 Large Lot Residential zone. It allows landowners to undertake a boundary adjustment with development consent, provided the consent authority is satisfied with certain matters which are listed as heads of consideration.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

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

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? Unknown

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

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Have inconsistencies with items a), b) and d) being adequately justified? **Unknown**

If No, explain : **Further discussion regarding SEPPs and s117 directions is provided later under the "Consistency with the Strategic Framework" section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **This is a policy related planning proposal. No mapping changes would result.**

Community consultation - s55(2)(e)

Has community consultation been proposed?

Comment : **Council has not nominated a community consultation period although Council's timeline notes that consultation and the review of submissions would occur within the same one month timeframe.**

As the provisions proposed are not overly complex and there are no environmental studies included in the proposal for the community to review, a 14 day consultation period is suggested.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **PLAN-MAKING DELEGATION**

Council has accepted plan-making delegation but it has not been requested in this instance. Given the PP relates to planning policy and requires the input of several agencies, it is recommended that plan-making delegation not be given to Council.

COMPLETION TIMEFRAME

Council's project timeline nominates a 6 month completion timeframe, with LEP drafting proposed to occur in April 2016. Given the Christmas, New Year and summer holiday season, a 9 month completion timeframe would provide an adequate buffer should any delays arise.

Overall adequacy of the proposal

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

If No, comment : **While Council has not consulted with either OEH or DPI, or provided all of the further information as requested by the Gateway previously, the new planning proposal contains sufficient information to be progressed to the Gateway for a determination.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Port Stephens LEP 2013 (PS LEP 2013) commenced in early 2014.**

Assessment Criteria

Need for planning proposal : **Council notes this PP is not the result of a specific study or strategy but rather the result of a notice of motion at a Council meeting in February 2015.**

It states that the proposal is about providing flexibility for boundary realignments,

particularly where there are lots that are already smaller than the minimum lot size. Where previous EPIs such as the PS LEP 2000 provided these opportunities, the current EPIs do not (the Codes SEPP clause 2.75, and SI LEP clauses 4.1 Minimum Subdivision Lot Sizes and 4.6 Exceptions to Development Standards).

The regional team supports the intention of Council's draft provisions. Providing avenues for lots that, through historic subdivisions, are already below the minimum lot size to adjust their boundaries is an appropriate planning outcome.

The concern that the regional team has with Council's approach is that it would also provide a means for lots above the minimum lot size to be reduced below the minimum lot size, potentially undermining their capacity to maintain the rural production or environmental conservation outcomes sought for that land. The minimum lot sizes have been developed through previous studies/ strategies and are in place to help ensure the zone objectives are achieved.

The other aspect of the proposal is for small lots to be made smaller by using these provisions, and in doing so, create opportunities for rural residential living in areas identified for primary production. While the provisions would not provide additional dwelling opportunities, they may, over time, result in rural lifestyle residents dispersed throughout primary production areas. This in turn may create land use conflicts for rural lifestyle residents and primary producers alike.

In terms of the exempt development, calculating the variation using "at least one pre-existing lot" is problematic. It provides a level of variation that goes beyond the intended outcomes of exempt development. The proposed provision should adopt the approach taken in the SEPP for urban land ie it allows a % variation (10 %) but the variation is measured against any lot:

"(vii) if located in any other zone—that will not result in a change in the area of any lot by more than 10%,"

So, applying this approach to the earlier scenario, a 61.4 ha lot and a 8.1 ha lot would be the maximum land transfer that could result using the 15 % variation. This is a more preferable level of variation for exempt development. A condition is recommended to address this.

The advantage of the 15 % variation is that it provides a numeric standard which can be clearly determined, unlike the SEPP's current wording which refers to a "minor change in the area". Whether 15 % is appropriate can be better determined following consultation with DPI and OEH. A smaller number, similar to the 5 % used in the Greater Taree LEP 2010, may be more appropriate.

The inclusion of the R5 zone in the proposed exempt provision is not supported because it directly conflicts with the SEPP approach and the SEPP amendment does not seek to change its provisions as they relate to R5. It should be removed from the provision.

Subject to these changes and agency consultation, the exempt provision is supported. Its impacts would be relatively minor and its intent is supported. It is similar to the provisions of the Codes SEPP prior to its February 2014 amendment and the more recently exhibited Codes SEPP Housekeeping amendment.

In terms of the local provision, Council argues that the heads of consideration included in the draft clause adequately address the key issues (ie no additional lots or dwellings, agricultural viability, land use conflict). However, there is no broader policy already prepared or proposed by Council upon which to undertake these assessments.

As Council highlights, the Gateway has supported this clause in other local government

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areas. Therefore, the progression of the local clause component can also be supported. However the clause should be updated to reflect a more recent version (refer Narromine LEP 2011 clause 4.2E). Consultation with OEH and DPI is also required, specifically regarding the heads of consideration, to determine whether the clause is adequate in the Port Stephens context.

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Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY (LHRS)

The LHRS identifies the protection of high value agricultural land as a desired outcome. It also notes this land to be in the Port Stephens Local Government Area.

Similarly, the LHRS seeks to ensure that lands identified in the Stockton-Watagans green corridor and other areas of environmental significance are protected and conserved. These lands are also situated within Port Stephens.

Given these outcomes directly relate to land within Port Stephens and the concerns identified earlier, further information is required before consistency with the regional strategy can be determined. Input from OEH and DPI would help inform this consideration.

The Department has recently released a draft Hunter Regional Plan and draft Plan for Growing Hunter City for comment which, once adopted, will replace the LHRS.

COMMUNITY STRATEGIC PLAN (2022)

The Community Strategic Plan 2022 has been superseded by the Community Strategic Plan 2023. This should be updated.

Council notes the proposal would provide a practical solution for the assessment of DAs, which will help Council achieve the performance measures listed in Strategic Direction 3.7 "Provide development and building assessment and compliance services".

The Strategic Direction referred to by Council appears to be a Delivery Program item, rather than a Strategic Direction of the Community Strategic Plan. The Strategic Direction related to that item is to "Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations."

The regional team considers that provided OEH and DPI are satisfied with the proposed provisions, the PP could be considered consistent with this strategic direction.

PORT STEPHENS PLANNING STRATEGY (PSPS)

Council states the PSPS recognises the importance of rural and environmental lands in the LGA. It asserts that the integrity of those lands would not be undermined by the PP because the provisions provide strict parameters on potential boundary realignments.

As with the Community Strategic Plan, provided OEH and DPI are satisfied with the proposed provisions, the PP could be considered consistent with the broad intention of the PSPS.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

SEPP (Exempt and Complying Development Codes) 2008 - the proposed exempt provision is inconsistent with the provisions of the SEPP. The provision would remove the restriction imposed on lots below the minimum lot size, would introduce a 15 % variation requirement which is measured based on at least one of the original lots, and it proposes to have this provision also apply to land zoned R5 Large Lot Residential.

The regional team supports the general intent of the provision ie to remove the restriction imposed on lots smaller than the minimum lot size. This is because this element aligns with the recently exhibited Codes SEPP housekeeping amendment. Progression of this provision would provide landowners with the opportunity to realign boundaries in the event the SEPP amendment is delayed. Should the SEPP amendment be finalised before this PP then Council's provision becomes redundant.

Other elements of the proposed exempt provision are not supported. The inclusion of the R5 zone directly conflicts with the SEPP. Measuring the variation based on at least one pre-existing lot provides opportunities for variations that may exceed the intent of exempt

development.

The 15 % variation figure requires further input from DPI and OEH.

The regional team has previously discussed introducing a LEP exempt provision to facilitate the boundary realignments between lots below the minimum lot size with the Codes SEPP team. They have not raised issue with introducing a LEP exempt provision but note the provision would be redundant should the SEPP amendment be finalised.

SEPP (Rural Lands) 2008 - the PP is potentially inconsistent with the rural subdivision principles, namely clause 8(b) the minimisation of land use conflicts. Further consultation with DPI is proposed. This would assist in considering whether the PP is consistent with the SEPP.

SECTION 117 DIRECTIONS

The PP is consistent with the relevant s117 directions except the following which require further work before consideration can be determined:

1.5 Rural Lands - the PP is 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 is required before consistency with this direction can be determined.

2.1 Environment Protection Zones - the PP is 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 is required before consistency with this direction can be determined.

5.1 Implementation of Regional Strategies - the PP is potentially inconsistent with this direction because the PP may be inconsistent with the LHRS (clause 4). Following consultation with OEH and DPI, consistency with this direction can be determined.

Environmental social
economic impacts :

ENVIRONMENTAL IMPACTS

Council considers that environmental impacts would be minimised as a result of this PP. However, as discussed, the regional team has concerns regarding the potential for land use conflicts to be created and the potential for the objectives of the zones to be undermined.

Consultation with OEH and DPI, specifically about the adequacy of the heads of consideration and supporting policy, would help inform Council's and the Department's understanding of impacts in the Port Stephens context.

SOCIAL AND ECONOMIC IMPACTS

Social Impacts are considered to be minimal.

Consultation with DPI would help inform the understanding of any potential economic impacts.

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Assessment Process

Proposal type : **Inconsistent** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **DDG**

Public Authority : **Office of Environment and Heritage**
Consultation - s56(2)(d) : **NSW Department of Primary Industries - Agriculture**

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
Request for Gateway Determination.pdf	Proposal Covering Letter	Yes
Council Resolution and Report.pdf	Proposal Covering Letter	Yes
Planning Proposal.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**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.2 Reserving Land for Public Purposes**

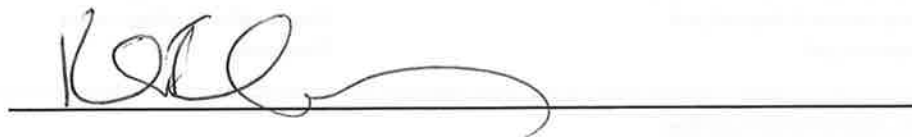
Additional Information : **1. Council is to amend the exempt provision detailed in the Explanation of Provisions to:**

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- (a) remove reference to the R5 Large Lot Residential zone; and
 - (b) change the requirement which specifies how the extent in variation is determined by deleting the reference to "at least one pre-existing lot" and replacing it with "any lot".
2. Council is to change the local clause detailed in the Explanation of Provisions such that it mirrors the provisions of clause 4.2E of the Narromine LEP 2011 but refers to the zones proposed by Council.
 3. Council is to update the planning proposal to refer to Council's Community Strategic Plan 2023.
 4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Planning & Infrastructure 2013) and must be made publicly available for a minimum of 14 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 5.5.2 of A Guide to Preparing LEPs (Planning & Infrastructure 2013).
 5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage
 - Department of Primary Industries (Agriculture)
- 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
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).
 7. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Supporting Reasons :

Signature:



Printed Name:

K O'FLAHERTY

Date:

29/11/15