



Mr Wayne Wallace
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: 15/16521
Your ref: PSC2015-01491

Attention : Ms Sarah Connell

Dear Mr Wallace

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to your Council's letter dated 28 October 2015 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to insert boundary realignment provisions to the Port Stephens Local Environmental Plan 2013.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The amending local environmental plan is to be finalised within nine months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made to the Department at least six weeks prior to the projected publication date.

The Minister's plan making powers were delegated to council in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan in this instance.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any questions regarding this matter, I have arranged for Mr Ben Holmes from the Hunter office to assist you. Mr Holmes can be contacted on (02) 4904 2709.

Yours sincerely,

A. W. Albury 1-12-2015

Ashley Albury
A/ General Manager, Hunter and Central Coast Region
Planning Services

Encl: Gateway determination

Gateway Determination

Planning Proposal (Department Ref: PP_2015_PORTS_009_00): to insert boundary realignment provisions into the Port Stephens LEP 2013.

I, the Acting General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to insert boundary realignment provisions should proceed subject to the following conditions:

1. Council is to amend the exempt provision detailed in the Explanation of Provisions to:
 - (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 amend the explanation of provisions for the local clause to use the latest clause settled with Parliamentary Counsel and including the zones proposed by Council. A copy of this clause is attached.
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.

Dated 1st December 2015



Ashley Albury
A/ General Manager, Hunter and
Central Coast Region
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

Boundary adjustments in certain rural and environmental protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones;
Council to list relevant zones here
- (3) Despite clause 4.1 (3), development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after subdivision will remain the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) if the land is in Zone RU1 Primary Production, RU2 Rural Landscape or Zone RU3 Forestry—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and
 - (e) if the land is in Zone E2 Environmental Conservation, Zone E3 Environmental Management or E4 Environmental Living —the subdivision will result in the continued protection and long-term maintenance of the land.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a land use on any adjoining land,
 - (d) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
 - (e) whether or not the subdivision is likely to have a significant adverse impact on the environmental values of the land.
- (5) This clause does not apply:
 - (a) in relation to the subdivision of individual lots in a strata plan or community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.