

Department of Planning

File Number:10/14691

Date: 26 August 2010

SUBJECT: SINGLETON COUNCIL - APPLICATION UNDER S65 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 FOR THE PREPARATION OF A DRAFT LOCAL ENVIRONMENTAL PLAN IN RESPECT OF AMENDMENT 43, LAND AT SEDGEFIELD.

Singleton Council has prepared a draft local environmental plan (Singleton Local Environmental Plan 1996 - Amendment No. 43) that will:

1. Rezone 130ha of land from 1(a) Rural Zone to 7(b) (Environmental Living Zone) to yield approximately 32 lots;
2. Rezones 38ha of land from 1(a) Rural Zone to 7 (Environmental Protection Zone) and
3. Inserts a lot size map for the subject land.

This report recommends that the delegate of the Director-General issue a Section 65 Certificate certifying that the draft plan is suitable for public exhibition subject to resolving the outstanding issues prior to seeking a PC Opinion.

BACKGROUND

The draft Local Environmental Plan (LEP) applies to Lot 12 DP 1062336 and Lot 252 DO 804008 Mirannie Road, Sedgefield.

The subject lands were originally identified within the Singleton Rural Residential Strategy 2005. Whilst this document was never formally endorsed by the Director General, it was accepted by the Regional Office subject to a Structure Plan being prepared.

The Rural Strategy was used in the preparation of the Singleton Land Use Strategy 2008. The Strategy, which was endorsed by the Director General in 2008 identified the subject lands within the Sedgefield Candidate area for Rural Residential style development. The Strategy nominated a 5ha minimum lot size subject to the preparation of a Structure Plan. .

A Structure Plan was prepared and submitted to the Department for review in March 2009. The Council did consult with any additional government agencies at this time. It was that considered that the findings of the Structure Plan could be reviewed by the appropriate agencies during the preparation of the draft plan.

The matter was considered by the LEP Review Panel at its meeting of 16 July 2009. The Director General advised Council that is may proceed with the rezoning on 22 July 2009. A Written Authorisation to Exercise Delegation was not issued. The Director General also encouraged Council to amalgamate the subject LEP with others from the Sedgefield Candidate Area. Council have indicated that amalgamation is likely after exhibition, depending on any issues that arise and therefore may hold up individual LEPs.

S54 NOTIFICATION, S64 SUBMISSION, REGIONAL ENVIRONMENTAL PLANS, GOVERNMENT POLICIES & S117 DIRECTIONS

The land is identified in the Singleton Land Use Strategy.

The draft LEP has been considered by the LEP Review Panel on 16 July 2009. The LEP is consistent with the s54 response.

Council have undertaken consultation with government agencies as required under Section 62 of the Environmental Planning and Assessment Act, 1979. The table below outlines the responses received, and a discussion of the issues raised:

Issues Raised	Comments
Rural Fire Service (RFS)	
Object to the concept plan of subdivision. Roads which are more than 200m in length are required to be through roads.	A new concept plan should be required prior to the plan being made to ensure that this objection can be resolved.
Department of Environment, Climate Change and Water (DECCW)	
Support the proposal provided the fauna and flora recommendations are implemented.	This can be implemented through the preparation of the DCP and assessment of development applications. Use of the Conservation Zone and Environmental Living Zone will also assist in the implementation of the recommendations.
NSW Office of Water (NOW)	
Need to give consideration to riparian buffers and issues regarding basic landholder rights. Need to confirm legal status of existing dams.	These issues can be addressed in the preparation of the DCP and assessment of development applications.
Department of Industry and Investment (I & I)	
Supports the proposal. No issues raised	
Hunter and Central Rivers Catchment Management Authority (CMA)	
Raises the issue that it may be difficult to obtain approval under the Native Vegetation Act 2003. It concludes that the proposal should demonstrate how it will meet the "improve or maintain" principle.	If development cannot not obtain approval under the Native Vegetation Act 2003 then rezoning of the subject land is not appropriate. A concept plan, consistent with the requirements of the RFS should be discussed with the CMA prior to a PC Opinion being obtained, to ensure the "improve or maintain" outcome can be achieved. If it cannot, then the draft plan should not be supported.

Singleton Land Use Strategy

The draft LEP amendment is consistent with the Strategy as endorsed by the Director General, as the land is within a candidate area. That endorsement was subject to not having average lot sizes in the strategy. It is noted that the Draft LEP aims to introduce a minimum lot size of 2 ha with a 5 ha average. Whilst this is not consistent with the Director General's endorsement of the strategy, it is consistent with the LEP Review Panel's consideration. It is further noted that neither the regional office, Panel or Director General have raised this as an issue in the section 54 response to Council

Section 117 Directions

Direction 1.2 Rural Zones applies to the proposed rezoning. The DG has agreed that the inconsistency with this direction is justified by the land use strategy.

State Environmental Planning Policies (SEPP's)

Consideration of the applicable SEPPs has been considered during investigations carried out for the site. It is considered that the draft plan is consistent with relevant SEPP's. No issues with SEPP's have been identified that would prevent the draft LEP being exhibited.

Standard Instrument

The draft plan is partly consistent with the standard LEP template as it uses a version of a Standard Instrument zone "7(b) Environmental Living Zone". This zone was inserted into the Singleton LEP 1996 via an amendment published in June 2010. This zone is consistent with the E4 Environmental Living Zone contained in the standard instrument.

CONSIDERATION

This land has been identified for more intense environmental living development in the Singleton Land Use Strategy

It is therefore considered appropriate that the draft LEP be placed on exhibition to allow public input into the process. Council will be encouraged to amalgamate the draft LEP with others post exhibition.

The issues regarding the CMA and RFS must be resolved prior to a PC Opinion being sought. Council should prepare the required DCP, which contains a concept plan consistent with the requirements of the RFS. This concept plan should then be reviewed by the CMA to determine if the clearing required by the selected building envelopes and road layout will meet the "Improve or Maintain" principle under the Native Vegetation Act 2003.

RECOMMENDATION

It is recommended that the following action be taken:

1. That a Section 65 Certificate be issued to the Council.
2. Council is advised in terms of the letter attached.

Amy Blakely

Amy Blakely
Environmental Planning Officer

Gary Freeland 26/8/10

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As delegate for the Director General