

Planning and Assessment

IRF20/3645

Gateway determination report

LGA	Port Stephens LGA
PPA	Port Stephens Council
NAME	Rezone land from zone RU1 Primary Production to zone R5 Large Lot Residential and amend the minimum lot size on land, 792 Seaham Road, Seaham
NUMBER	PP_2020_PORTS_003_00
LEP TO BE AMENDED	Port Stephens Local Environment Plan (PSLEP) 2013
ADDRESS	792 Seaham Road, Seaham
DESCRIPTION	Lot 100 DP 1064980
RECEIVED	28 July 2020
FILE NO.	IRF20/3645
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Port Stephens Local Environmental Plan (PSLEP) 2013 as follows-

- rezone subject land from zone RU1 Primary Production to zone R5 Large Lot Residential, and
- amend the minimum lot size on land from 40 hectares to 2 hectares.

1.2 Site and surrounding area description

The subject land is described as Lot 100 DP 1064980, 792 Seaham Road, Seaham. The land has an area of 45ha and has a frontage to Seaham Road and Sophia Jane Drive. The subject land contains a single dwelling, a machinery shed and other ancillary structures. There are native trees located in the middle and the eastern side of the site. The site slopes from west to east.

The subject land is surrounded by a mix of rural residential allotments to the west, a mixture of cleared pasture lands and remanent bushland to the north, east and south (Figure 1). A mapped wetland is located along much of the eastern boundary of the site and within the northern east area of the site.



Figure 1: Aerial View of the Subject site. Source -ePlanning Spatial Mapping

1.3 Existing planning controls

The site is zone RU1 Primary Production and has a minimum lot size (MLS) of 40ha, consistent with surrounding land zone RU1 Primary Production.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the proposal area contained in Part 1 Page 4 of the planning proposal. They clearly articulate the intended outcome of the planning proposal is to facilitate creation of large lot rural residential subdivision and housing at 792 Seaham Rd, Seaham.

2.2 Explanation of provisions

The proposed explanation of provisions is contained in Part 2, page 4 of the planning proposal. The proposal intends to achieve its objectives by amending Land Zoning Map (LZN_001) and Lot Size Map (LSZ_001) under Port Stephens LEP 2013.

2.3 Mapping

The proposal will require map sheets LZN_001 and LSZ_001 to be updated to show the new zone (Figure 2) and MLS provisions (Figure 3).

- Amend zone from RU1 Primary Production to R5 Large Lot Residential on Land Zoning Map LZN_001



Figure 2: Existing Zoning and Proposed Zoning maps. Source- Port Stephens Planning Proposal report, 2020

- Amend minimum lot size from 40ha to 2 ha on Lot Size Map LSZ_001



Figure 3: Existing MLS and Proposed MLS maps. Source- Port Stephens Planning Proposal report, 2020

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal seeks to increase to the density of residential land use through permitting development of large residential lots of at least 2ha.

The planning proposal would allow the land to be developed for residential purposes with the same development controls of the surrounding area. It is agreed that proposal is the best means for achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State strategies applicable to the proposal.

4.2 Regional

The planning proposal provides it is consistent with the objectives of the Hunter Regional Plan 2036 and Greater Newcastle Metropolitan Plan 2036 by providing for growth and changes in strategic centres.

Port Stephens economy has a diverse and growing industry and employment base. The strategic centre of Raymond Terrace is located approximately 10km west of the subject site, it supports local and surrounding communities with services such as retailing, government, civic and professional services. The Greater Newcastle Metropolitan Plan states Raymond Terrace will provide local housing and jobs

opportunities within the Greater Newcastle. Improvements to the intra-regional public transport system and connection to other transport modes are some of the outcomes of the Plan. The Planning proposal will give effect to Strategy 18 Deliver well planned rural residential housing.

4.3 Local

Port Stephens Local Strategic Planning Statement (LSPS) is the local strategic planning framework for Port Stephens local government area to 2040. The LSPS identifies twelve priorities focused around Port Stephens Economy, Housing, Environment, and Transport. This planning proposal gives effect to three of the twelve priorities, relating to housing and the economic vision for Port Stephens by contributing to a variety of diverse centres and neighbourhoods that connect residents, visitors and workers with their community, the environment and opportunity.

Port Stephens Local Housing Strategy was adopted by Council on 14 July 2020. Council are currently seeking endorsement by the Department of Planning, Industry and Environment (DPIE).

The Strategy provides an overarching strategy to guide land use planning for new housing in Port Stephens. The document aims to ensure suitable land supply, improve housing affordability, increase diversity of housing choice and facilitate liveable communities.

The planning proposal will give effect to:

- Priority 1.1 Ensure adequate supply of new housing
 - The Strategy seeks to support economic and population growth, while preserving productive agricultural land, the environment and natural landscape. It notes a balanced approach is required when planning for future urban and rural housing areas.
 - The Strategy preferences greenfield housing on sites that are unconstrained.
 - The subject site is assessed as low priority for development in accordance with the Strategy, given constraints such as flooding, biodiversity corridors, bushfire, slope, and proximity to conflicting land uses and limit of existing and future infrastructure, including no future plans for the site to be connected to reticulated sewer.
- Outcome 2 - Improve housing affordability by providing additional supply of housing in the area, reducing housing stress and providing more opportunities for affordable housing near the centres where the jobs are likely to be located. The planning proposal will enable provision of additional large lot residential allotments in the area.

The strategy provides criteria for rural residential land in Appendix 2. A table addressing the criteria is provided in the planning proposal on page 12. The subject site adequately satisfies the criteria, with exception to the following which have been addressed with supporting information and documentation for the purpose of the planning proposal. Some matters require further consultation to resolve, as follows:

Exclusionary criteria:

- The proposal is not consistent with criteria regarding acid sulphate soils, information is provided on page 35 of the planning proposal which satisfactorily addresses this matter.
- The proposal is not consistent with criteria regarding the Flood Planning Area, supporting information provided in the planning proposal satisfactorily addresses this matter. Consultation with DPIE-Water is recommended after a Gateway Determination is issued to give further consideration to this matter.
- The proposal is not consistent with criteria regarding impact on high biodiversity value land. Consultation with DPIE-Biodiversity Conservation Division (DPIE-BDC) is required after a Gateway Determination is issued to address this matter.

Management criteria:

- The proposal is not consistent with criteria regarding the Flood Planning Area, as noted above.
- The proposal is required to show consistency with the strategic principles of Planning for Bushfire Protection (BPB) 2019. Consultation is required with the Rural Fire Service (RFS) to determine the ability of proposed land uses and associated future developments to comply with PBP 2019; Part 2.3 of the BPB requires this assessment at the strategic planning stage.
- The proposal is not consistent with criteria regarding impact on endangered ecological communities, threatened species and habitats for rural fringe area. Consultation with DPIE-Biodiversity Conservation Division (DPIE-BDC) is required after a Gateway Determination is issued to address this matter.
- The proposal is not consistent with criteria regarding koala habitat and corridors. The proposal seeks to address these matters. Further consideration is necessary to satisfactorily address that development of the site would not sever koala movement across the site. Consultation with DPIE-Biodiversity Conservation Division (DPIE-BDC) is required after a Gateway Determination is issued to address this matter.

Port Stephens Rural Residential Strategy

The Port Stephens Local Housing Strategy provides that a proposal to zone land for rural residential purposes must address the Port Stephens Rural Residential Strategy, including any matters for investigation included in the Strategy.

The subject site forms part of Investigation Area 7 (Osterley/Nelson Plains). The Strategy requires proposals to address the matters for investigation that have been identified for the proposal land. The planning proposal satisfactorily addresses these matters on page 19.

The Strategy provides that a proposal needs to demonstrate that there is less than 10 years supply of zoned and serviceable rural residential land in the district local government area (Volume 2, page 9). For the purpose of this proposal, the information

in Table 1 of the Port Stephens Local Housing Strategy is considered adequate in detailing there is no greenfield land currently available in the Rural West planning area where the subject site is located.

4.4 Section 9.1 Ministerial Directions

Assessing the proposal, it is determined to be consistent with the following section 9.1 Directions:

- Direction 2.3 Heritage Conservation
- Direction 5.10 Regional Plans

The proposal is inconsistent with the following Section 9.1 Ministerial Directions:

Direction 1.2 Rural Zones is relevant to the planning proposal. This direction provides that a planning proposal must not rezone land from rural to a residential zone or increase the permissible density of land. The proposal may be inconsistent with this direction if it is consistent with the Hunter Regional Plan, and relevant local strategies.

The planning proposal satisfactorily addresses consistency with the criteria for rural residential land provided in the Port Stephens Local Housing Strategy (endorsed by Council July 2020) and satisfactorily addresses the matters for investigation associated with Investigation Area 7 of the Port Stephens Rural Residential Strategy (endorsed by Council July 2020).

Whilst the Port Stephens Rural Residential Strategy has not been endorsed by the Department of Planning, Industry and Environment, the strategy does provide strategic merit for this proposal. The inconsistency with Direction 1.2 is justified in accordance with the terms of the direction.

Direction 1.5 Rural Lands is relevant to the planning proposal. Consultation is required with Department of Planning, Industry and Environment – Agriculture after a Gateway Determination is issued with regard to potential land use conflict from nearby poultry farms and supporting farmers in excising their right to farm. Until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 2.1 Environment Protection Zones is applicable to this planning proposal as the subject land contains environmentally sensitive land. The site contains a wetland (Port Stephens LEP Wetlands Map WET_001) and an area mapped high biodiversity value. The Preliminary Ecological Assessment provided identifies two endangered ecological communities, potential habitat for threatened fauna species and preferred koala habitat on site.

Consultation is required with Department of Planning, Industry and Environment, Biodiversity Conservation Division (DPIE-BDC) after a Gateway Determination is issued; until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 2.6 Remediation of Contaminated Land is relevant to the planning proposal. Council shall obtain and have regard to a report detailing the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines after a Gateway Determination is issued.

Direction 3.1 Residential Zones is relevant to the planning proposal. The inconsistency is adequately justified as of minor significance in the planning proposal, page 31.

Direction 3.4 Integrating Land Use and Transport is relevant to the planning proposal. The inconsistency is adequately justified on page 32 of the planning proposal.

Direction 3.5 Development Near Regulated Airports and Defence Airfields is relevant to the planning proposal. Consultation with Newcastle Airport, Civil Aviation and Safety Authority (CASA) and the Commonwealth Department of Defence is required after a Gateway Determination is issued; until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 4.1 Acid Sulphate Soils is relevant to the planning proposal. This direction requires that an acid sulphate soils study must be considered prior to rezoning land mapped as containing acid sulphate soils (ASS). The planning proposal impacts on lands identified with Acid Sulphate Soil risk classes 2 to 4. The Port Stephens LEP contains existing provisions to ensure the consideration of ASS during development assessment. As adequate provisions already exist and the nature of the proposal, it is considered any inconsistency with this direction is justified as being of minor significance.

Direction 4.3 - Flood Prone Land is relevant to the planning proposal. The subject site is indicated to be impacted by the High Hazard Flood Storage Area, Low Hazard Flood Fringe and Flood Prone Land. Assessment concludes the inconsistencies are of minor significance as the planning proposal has detailed an adequate emergency response and habitable floor levels can be achieved (Flood Assessment, BMT WBM June 2017). Consultation with DPIE – Water is recommended following a Gateway determination in regard to this.

Direction 4.4 Planning for Bushfire Protection is relevant to the planning proposal. The site is identified in the Preliminary Bushfire Assessment Report as bush fire prone. The direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway Determination is issued; until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

It should be noted that updated bushfire report may recommend removal of additional native vegetation located on the site to meet requirements for Asset Protection Zones. This should be considered by DPIE-BDC during consultation.

4.5 State environmental planning policies (SEPPs)

The planning proposal has provided an assessment of the proposal against the State Environmental Planning Policies on Table 1, page 21 of the planning proposal. The planning proposal is consistent with the following SEPPs:

SEPP No. 55 Remediation of Land: A preliminary contamination investigation will be undertaken after a Gateway determination has been issued.

SEPP (Koala Habitat Protection) 2019: The Port Stephens Comprehensive Koala Plan of Management maps the subject land as having a small area of preferred koala habitat, marginal koala habitat and linking marginal koala habitat. The Plan provides performance criteria for rezoning which are applicable to this proposal. The assessment provides that the area identified as preferred koala habitat is proposed to be zone R5 Large Lot Residential though is unsuitable for residential development as it is High Hazard Flood Storage. Further assessment will be undertaken following a

Gateway determination to determine consistency with criteria (c) and (d) to consider the need for tree retention so as not to sever or impede on koala movement across the site. Consultation with DPIE-BCD is required prior to public exhibition, should the proposal be supported.

State Environmental Planning Policy (Primary Production and Rural Development):

The assessment identifies the site is located 1km from a poultry farm. Consultation with DPIE – Agriculture is required in regard to potential land use conflict from nearby poultry farms and supporting farmers in excising their right to farm.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and economic

The planning proposal will provide additional residential development in Seaham and will assist in meeting local and regional dwelling demand while providing a variety of housing options. The planning proposal will also provide residential uses near centres where residents can easily access community service and facilities.

Further investigations (Odour assessment) may be required to provide sufficient detail to satisfy inconsistency with Direction 1.5 Rural Zones. A condition is recommended on the Gateway determination which requires Council to consult with DPIE-Agriculture prior to public exhibition of the planning proposal.

5.2 Environmental

The subject site is identified as bushfire prone, flood prone and containing acid sulphate soils. The Ecological Assessment identifies the site has important biodiversity values including two ecological endangered communities and potential habitat for threatened fauna species.

The planning proposal states future development of the site will result in removal of trees which will trigger the biodiversity offset scheme under the *Biodiversity Conservation Act 2016* (page 43).

Further investigations may be required to provide sufficient detail to satisfy inconsistency with Direction 2.1 Environmental Protection Zones. A condition is recommended on the Gateway determination which requires Council to consult with DPIE-BDC prior to public exhibition of the planning proposal.

5.3 Infrastructure

The proposal is located within existing urban infrastructure servicing catchments including connections to existing public road, electricity and telecommunications. The planning proposal states on page 10 the land is not planned to be serviced by reticulated sewer. The planning proposal states further consultation will be undertaken with Hunter Water Cooperation (HWC) to confirm capacity of existing water infrastructure & feasibility of onsite wastewater management to service future development of the site.

5.4 Noise and Odour

The assessment identifies the subject site is located 1km from a poultry farm. Assessment has determined noise and odour impacts are deemed to be minimal. A condition is recommended on the Gateway determination to require consultation with DPIE – Agriculture to provide comment on potential agricultural land use conflict.

6. CONSULTATION

6.1 Community

A 28-day exhibition period is deemed to be adequate for this planning proposal.

6.2 Agencies

Consultation is required with the following agencies prior to public exhibition to satisfy consistency with the relevant Section 9.1 Directions:

- Department of Planning, Industry and Environment – Biodiversity Conservation Division
- NSW Rural Fire Service
- Department of Planning, Industry and Environment – Agriculture
- Newcastle Airport
- Civil Aviation and Safety Authority (CASA)
- Commonwealth Department of Defence
- Department of Planning, Industry and Environment – Water

Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act:

- Hunter Water Corporation

7. TIME FRAME

The planning proposal provides a timeframe of 12 months to completion. The time frame identifies the major milestones of the proposal as well as allocates time for completing further studies. This timeframe is supported.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Council should be authorised to be the local plan-making authority as they have no interests in the land.

9. CONCLUSION

The planning proposal is recommended to proceed with conditions as it:

- Is consistent with relevant region plans, local plans and strategies.
- Environmental hazards and impacts can be further investigated through consultation with the Rural Fire Service, Department of Planning, Industry and Environment – Biodiversity Conservation Division and Department of Planning, Industry and Environment – Water.
- Impacts on the Williamtown RAAF Base and Newcastle Airport can be identified and addressed through consultation with Newcastle Airport, Civil Aviation and Safety Authority and Commonwealth Department of Defence.
- Impacts on Koala habitat on site and safe and unrestricted movements across the site can be adequately identified and addressed through further investigation following a Gateway determination. Consultation with Department of Planning, Industry and Environment – Biodiversity Conservation Division and Department is required.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary agree that:

- Inconsistencies with section 9.1 Directions 1.2 Rural Zones, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport and 4.1 Acid Sulphate Soils are justified or are of minor significance.
- Inconsistencies with section 9.1 Directions 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.6 Remediation of Contaminated Land, 3.5 Development Near Regulated Airports and Defence Airfields and 4.4 Planning for Bushfire Protection will be addressed through further investigation and consultation with relevant agencies.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, the following is required:
 - (a) Preparation of a Bushfire Assessment Report and consultation with the Rural Fire service to address the proposal's inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection and potential agricultural land use conflict.
 - (b) Consultation with DPIE - Agriculture to address the proposals inconsistency with section 9.1 Direction 1.5 Rural Lands.
 - (c) Preparation of the necessary Biodiversity Study(s) and consultation with Department of Planning, Industry and Environment – Biodiversity Conservation Division to address the proposals inconsistencies with section 9.1 Direction 2.1 Environmental Protection Zones and performance criteria (c) and (d) of Port Stephens Comprehensive Koala Plan of Management.
 - (d) Preparation of report detailing the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines to address section 9.1 Direction 2.6 Remediation of Contaminated Land.
 - (e) Consultation with Newcastle Airport, Civil Aviation and Safety Authority (CASA) and Commonwealth Department of Defence to address section 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields
 - (f) Consultation with DPIE – Water with regard to Flood Prone Land.
 - (g) Consultation with Hunter Water to confirm capacity of existing water infrastructure & feasibility of onsite wastewater management to service future development of the site.

Council is to update the planning proposal to take into account the outcomes of the above studies and consultation and seek approval from the Department of Planning, Industry and Environment prior to undertaking community consultation.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and

Environment, 2018) and must be made publicly available for a minimum of **28 days**; and

- (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the 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).
 4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination and
 - (b) there are no outstanding written objections from public authorities.
 5. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.



28.8.20

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28.8.20

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