

Planning and Assessment

(IRF20/3648)

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 part of land at 22 Warrigal Close, Brandy Hill
NUMBER	PP_2020_PORTS_004_00
LEP TO BE AMENDED	Port Stephens Local Environment Plan (PSLEP) 2013
ADDRESS	22 Warrigal Close, Brandy Hill
DESCRIPTION	Lot 2 DP 1202880
RECEIVED	28 July 2020
FILE NO.	IRF20/3648
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 part of the subject land from RU1 Primary Production to R5 Large Lot Residential
- reduce the minimum lot size provisions for part of the subject land from 40 hectares to 2 hectares.

1.2 Site and surrounding area description

The subject land is described as Lot 2 DP 1202880, 22 Warrigal Close, Brandy Hill. The land has an area of 49ha and has access from Warrigal Close and McClymonts Swamp Road. The subject land currently contains a single dwelling, multiple metal sheds and other ancillary structures. There are some small clusters of trees located throughout the site and the site slopes from west to east. Barties Creek runs through the subject site, however is not part of this planning proposal subject land.

The subject land is surrounded by a mix of rural residential allotments and agricultural allotments to the east and a mixture of cleared pasture lands to the north, west and south (Figure 1). The subject site has historically been used for agricultural activities.



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 22 Warrigal Close, Brandy Hill.

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_001A) and Lot Size Map (LSZ_001A) under Port Stephens LEP 2013.

2.3 Mapping

The proposal will require map sheets LZN_001A and LSZ_001A to be updated to show the new zone (Figure 2) and MLS provisions (Figure 3).

- Amend part of the land zone from RU1 Primary Production to R5 Large Lot Residential on Land Zoning Map LZN_001A



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

- Amend minimum lot size for part of the land from 40ha to 2 ha on Lot Size Map LSZ_001A



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 the density of residential land use through permitting development of large residential lots for part of the subject site.

The subject land adjoins land zone R5 Large Lot Residential with an MLS of 2ha. The planning proposal would allow the land to be developed for residential purposes with the same development controls of the nearby 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 12km east of the subject site, it supports local and surrounding communities with services such as retailing, government, civic and professional services. The planning proposal will support the growth of Raymond Terrace by offering additional large lot residential housing options for people who may be employed within the surrounding strategic centres.

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 4 Grow health precincts and connect the health network to major health precincts in Greater Newcastle.
- Strategy 18 Deliver well planned rural residential housing.
- Strategy 20 Integrate land use and transport planning in greater Newcastle.

4.3 Local

Port Stephens Community Settlement and Infrastructure Strategy (2007) includes a range of strategic directions and sustainability principles and criteria on future urban settlement that balances and integrates current and future economic, environmental and social issues, trends and characteristics of the Port Stephens Local Government Area. The Strategy identifies Seaham as an existing neighbourhood. The local road network between Seaham to Raymond Terrace is well utilised. The planning proposal will provide additional housing in the locality.

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 (Live Port Stephens) 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 approach 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:

- Outcome 1- ensure suitable land supply by enabling future green fill housing area that is in proximity to an existing centre (Seaham) and adjoining an existing residential zone.
- Outcome 2- Improve housing affordability by providing additional supply of housing in the area thus 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 blocks in the area.

Port Stephens Rural Residential Strategy

The strategy sets criteria for different housing options for Port Stephens. A table addressing the criteria is provided in the planning proposal on page 18. The subject site adequately satisfies the locational criteria, with exception to the following which have been addressed with supporting information and documentation for the purpose of the planning proposal:

- Exclusionary criteria:
 - The part of the land subject to this proposal is affected by Class 2, 3 & 5 acid sulphate soil (ASS). It is indicated that there are enough lands to develop outside of the land affected by class 2 & 3 ASS. The proposal is consistent with criteria regarding acid sulphate soils based on the rezoned part of the subject site not including any class 2 acid sulphate affected soil. Information is provided on page 37 of the planning proposal which satisfactorily addresses this matter.
 - The proposal is not consistent with criteria regarding the Flood Planning Area, however the supporting information provided in the planning proposal satisfactorily addresses this matter.
- Management criteria:
 - A proposal needs to demonstrate that there is less than 10 years supply of zoned and serviceable rural residential land in the district LGA. This has not been provided.

4.4 Section 9.1 Ministerial Directions

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

- Direction 2.1 Environment Protection Zones
- Direction 2.3 Heritage Conservation
- Direction 4.4 Planning for Bushfire Protection
- 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 Strategy. 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. This direction provides that a planning proposal must minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses. The subject site is identified as Biophysical Strategic Agricultural Land (BSAL). Consultation with DPIE- Agriculture is required 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 33.

Direction 3.4 Integrating Land Use and Transport is relevant to the planning proposal. The inconsistency is adequately justified on page 34 of the planning proposal.

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, 3 & 5. The Port Stephen 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 Floodway Area, High Hazard Flood Storage Area and Low Hazard Flood Fringe. The part of the site sought to be rezoned under this proposal however will only result in part of the site being affected by the impacts stated above, there are sufficient land available to develop outside these hazard areas. Consultation with Department of Planning, Industry and Environment Water will be required after a Gateway Determination is issued; until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

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 (PSKPoM) maps the subject land as having a small area of marginal koala habitat to the east of the site and rest is identified as mostly cleared. The APZ required by the Bushfire assessment will ensure the marginal habitat areas are not affected by development.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and economic

The proposed planning proposal will provide additional residential development in Brandy Hill assisting 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.

5.2 Environmental

The subject site is identified as bushfire prone, flood prone and containing acid sulphate soils. The Ecological assessment identifies the small portion of the eastern side of the site as Marginal Koala Habitat area under PSKPoM. Recommended bushfire controls will protect the habitat area.

5.3 Infrastructure

The proposal is located within existing urban infrastructure servicing catchments including connections to existing public road, electricity, water and telecommunications. The planning proposal states on page 7 the land is not planned to be serviced by reticulated sewer. The planning proposal states further consultation will be undertaken with Hunter Water Cooperation to confirm capacity of existing water infrastructure to service future development of the site.

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 during public exhibition:

- 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 complete the planning proposal. 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.
Will provide for additional housing within Brandy Hill and allow utilisation of the land given the location, topography and proximity to local centre of the subject site.
- Environmental hazards and impacts can be further investigated through consultation with the Department of Planning, Industry and Environment – Agriculture and Department of Planning, Industry and Environment – Water.
- Impacts on the Williamstown 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.

10. RECOMMENDATION

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

- The proposal must not result in land zone R5 Large Lot Residential that contains Class 2 acid sulphate soils.
- 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, 2.6 Remediation of Contaminated Land, 3.5 Development Near Regulated Airports and Defence Airfields and 4.3 Flood Prone land 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) Consultation with DPIE - Agriculture to address the proposals inconsistency with section 9.1 Direction 1.5 Rural Lands.
 - (b) 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.

- (c) 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
- (d) Consultation with DPIE – Water with regard to flood prone land.

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

- Hunter Water Corporation

Each public authority/organisation 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.

4. 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).
5. 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.

6. 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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