

Administrative Amendment - Port Stephens LEP 2000

Proposal Title :	Administrative Amendment - Port Stephens LEP 2000		
Proposal Summary :	This Planning Proposal is an administrative amendment to Port Stephens LEP 2000. It aims to rezone and reclassify land.		
PP Number :	PP_2013_PORTS_001_00	Dop File No :	13/07803

Proposal Details

Date Planning Proposal Received :	06-May-2013	LGA covered :	Port Stephens
Region :	Hunter	RPA :	Port Stephens Council
State Electorate :	PORT STEPHENS	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	27 Garden Avenue		
Suburb :	Raymond Terrace	City :	Postcode : 2324
Land Parcel :	Lot 279 DP 740009 6(a) General Recreation 'A'		
Street :	9 Rosemount Avenue		
Suburb :	Raymond Terrace	City :	Postcode : 2324
Land Parcel :	Lot 5 DP 261238 2(a) Residential 'A'		
Street :	1 Sketchley Street		
Suburb :	Raymond Terrace	City :	Postcode : 2324
Land Parcel :	Lot 1 DP 1093118 6(a) General Recreation 'A'		
Street :	77 Dawson Road		
Suburb :	Raymond Terrace	City :	Postcode : 2324
Land Parcel :	Lot 23 DP 843416 2(a) Residential 'A'		
Street :	15 & 20 Enterprise Drive		
Suburb :	Tomago	City :	Postcode : 2322
Land Parcel :	Lot 132 & 133 DP 246855 4(a) Industrial General 'A'		
Street :	44 Ferodale Road		
Suburb :	Medowie	City :	Postcode : 2318
Land Parcel :	Lot 10 DP 596640 1(c1) Rural Small Holdings 'C1'		
Street :	1& 2 Coachwood Drive		
Suburb :	Medowie	City :	Postcode : 2318
Land Parcel :	Lot 38 & 39 DP 807956 6(a) General recreation 'A'		

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Street :	1 Lyndel Close		
Suburb :	Soldiers Point	City :	Postcode : 2317
Land Parcel :	Lot 109 DP 243096 6(a) General Recreation 'A'		
Street :	8 Garuwa Street		
Suburb :	Fingal Bay	City :	Postcode : 2315
Land Parcel :	Lot 22 DP 241918 2(c) Residential 'C'		
Street :	44A Squires Street		
Suburb :	Fingal Bay	City :	Postcode : 2315
Land Parcel :	Lot 25 DP 247555 6(a) General Recreation 'A'		
Street :	13 School Drive		
Suburb :	Tomago	City :	Postcode :
Land Parcel :	Lot 34 DP 580267 4(a) Industrial General 'A'		
Street :	9 Mitchell Street		
Suburb :	Soldiers Point	City :	Postcode : 2317
Land Parcel :	Part Lot 322 DP 636840 3(a) Business General 'A'		
Street :	2 Ridgeway Avenue		
Suburb :	Soldiers Point	City :	Postcode : 2317
Land Parcel :	Part Lot 2071 DP 852662 3(a) Business General 'A'		

DoP Planning Officer Contact Details

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Contact Name :
Contact Number :
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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :	Date of Release :	
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots : 3	No. of Dwellings (where relevant) :	0
Gross Floor Area : 0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

Port Stephens prepared an Open Space Consolidation Review that was adopted by Council on 27 November 2007. Council has stated that the review identified a number of sites that were either considered to be surplus to Council's needs, or required reclassification to operational land to facilitate greater flexibility in management of the site.

Council adopted a report at its meeting on 28 July 2009 to reclassify and rezone (where required) eighteen (18) sites as an outcome of the review process. Fifteen (15) of these sites are included in this planning proposal (PP).

Council's 2010 draft Open Space Strategy re-examined the 2007 review and resulted in the following sites being recommended for reclassification to operational land. Council has also indicated that the delay in submitting the PP to the Department was resource related. Council funds have now permitted the opportunity to prepare the PP to rezone and reclassify the land and undertake required assessments.

Council submitted this Planning Proposal to the Department of Planning & Infrastructure in late April requesting a Gateway Determination to enable amendments to Port Stephens LEP 2000 (or the pending draft Port Stephens LEP 2013) pursuant to section 56 of the EP&A Act 1979.

Council notified the Department on 23 May 2013 that 77 Dawson Road, Raymond Terrace was misidentified in the PP as being inserted in PS LEP 2000 Part 2 of Schedule 1 but should be inserted in Part 1 of Schedule 1.

The final draft version of the Comprehensive Port Stephens LEP 2013 was adopted by Council on 26 March 2013.

External Supporting Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment : The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) which aims to rezone and reclassify land. The statement of objectives is supported.

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

Is an explanation of provisions provided? **Yes**

Comment : The PP aims to amend the Port Stephens LEP 2000 (PS LEP 2000). If completion of this PP is achieved after the pending Comprehensive Port Stephens LEP 2013 (PS LEP 2013) is published, the details listed later in this section will be implemented.

Council has noted the reclassification of the sites from community to operational land, and discharge of the 'public reserve' status (where applicable) will not reduce the availability of usable open space in the local government area to below Council's standards. Council notes that the land is surplus to their needs. The sites are no longer required for recreational purposes.

The PP includes amending PS LEP 2000 Schedule 1 - Classification and reclassification of public land:

1. Inserting into Part 1

*** 44 Ferodale Road, Medowie being Lot 10 DP 596640**

This site is occupied by the Medowie Community Centre. The reclassification of this land will provide Council with greater administrative efficiency and flexibility in managing the range of use and users at the centre. The remainder of the site is already classified as operational land.

*** 77 Dawson Road, Raymond Terrace being Lot 23 DP 843416**

Council has identified this land was transferred to Council on 25 September 1995, and is considered surplus to their needs. The site is 1845sqm. There is an adjacent open space playing field as well as playground, BBQ and shelters. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

2. Inserting into Part 2

Insertion of the following land into Part 2 requires Governor approval. For all the sites, the 'public reserve' status under Council's Public Land Register will be discharged, as will any interest or trusts etc not identified below. The reclassification of the sites from community land to operational land provides Council with greater flexibility in the management of their land, and potentially the ability to sell the land in the future.

a. 8 Garuwa Street, Fingal Bay being Lot 22 DP 241918

Council has identified this public reserve as surplus to their needs. The site is 929.5sqm and is not accessible to the general public because of its steep terrain, and does not provide an access for the public or service vehicles to the adjacent National Park. Council notes that private infrastructure (terraced garden area) has been constructed on the site most probably by adjacent property owners. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

b. 44A Squire Street, Fingal Bay being Lot 25 DP 247555

Council has identified this public reserve as surplus to their needs. The site is 2845sqm and has no signs of being used for formal or informal recreational activity. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

c. 1 Coachwood Drive, Medowie being Lot 38 DP 807956

Council has identified this public reserve as surplus to their needs. The site is 294.4sqm

and has no signs of being used for recreational activity. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

d. 2 Coachwood Drive, Medowie being Lot 39 DP 807956

Council has identified this public reserve as surplus to their needs. The site is 377.1sqm and has no signs of being used for recreational activity. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

e. 27 Garden Avenue, Raymond Terrace being Lot 279 DP 740009

Council has identified this public reserve as surplus to their needs. The site is 2016sqm and has no signs of being used for recreational activity. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

f. 1 Lyndel Close, Soldiers Point being Lot 109 DP 243096

Council has identified this public reserve as surplus to their needs. The site is 505.9sqm. This corner allotment is bordered by a paved vehicular access to a water reservoir, and residential dwellings. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

g. 9 Mitchell Street, Soldiers Point being Part Lot 322 DP 636840

The site is located adjacent to the Soldiers Point Marina, on the shores of the Port Stephens waterway. Council has indicated that the purpose of the reclassification is not to reduce public access, but will clarify and reinforce the right of public access and movement in the area. The operational land status will enable Council to regularise activities which have been taking place for some time, and in the process clearly define the right of public access, and conditions under which the Marina operators may use the land.

h. 2 Ridgeway Avenue, Soldiers Point being Part Lot 2071 DP 852662

The site is located adjacent to the Soldiers Point Marina, on the shores of the Port Stephens waterway. Council has indicated that the purpose of the reclassification is not to reduce public access, but will clarify and reinforce the right of public access and movement in the area. The operational land status will enable Council to regularise activities which have been taking place for some time, and in the process clearly define the right of public access and conditions under which the Marina operators may use the land.

i. 15 Enterprise Drive, Tomago being Lot 132 DP 246855

Council has identified this public reserve as surplus to their needs. The site is 1.332ha. Part of the land is being used as a detention area for the surrounding industrial subdivision. Part of the site is also presently being used as an unauthorised 4WD vehicular circuit. The reclassification of the land will facilitate increased opportunities to use parts of the site not required for stormwater detention purposes for other compatible uses.

j. 13 School Drive, Tomago being Lot 34 DP 580267

Council has identified this public reserve as surplus to their needs. The site is 1253sqm and effectively separates the surrounding industrial land from the street frontage. The land has no signs of being used for recreational activity. Council intends to sell the land. The land is located in an existing industrial area.

The following three sites will also be inserted in to Part 2 of Schedule 1 and will have the 'public reserve' status discharged from the land, but will also maintain the described interests in the land.

k. 9 Rosemount Drive, Raymond Terrace being Lot 5 DP 261238 NB. Any trusts etc not discharged: Easement to drain water (3 metres wide) as noted in the Certificate of Title Folio Identifier 14424/5

Council has identified this public reserve as surplus to their needs. The site is 640sqm and has no signs of being used for formal or informal recreational activity. Council intends to sell the land, and it is likely to be subsequently developed. The land is located in an existing residential neighbourhood.

l. 1 Sketchley Street, Raymond Terrace being Lot 1 DP 1093118 NB. Any trusts etc not discharged: Z755783 Easement to drain sewerage 3.5 metres wide affecting the part shown so burdened in the title diagram; DP 1093118 Easement sewer main 2.5 metres wide and variable affecting the part shown so burdened in the title diagram as noted in the Certificate of Title Folio Identifier 1/1093118

This site is being used as a museum complex operated by a local community heritage organisation. The reclassification will better reflect the nature of the activities undertaken on the site; will provide greater flexibility and certainty in the administration of the lease on the site. Council has noted that it will retain ownership of the site.

m. 20 Enterprise Drive, Tomago being Lot 133 DP 246855, NB. Trusts etc not discharged: Easement for pipeline created by Deed Book 3072 No.929 affecting the part of the land above described shown as 'Easement for Pipeline 20.115 Wide (DP 224706)' as noted in the Certificate of Title Folio Identifier Vol. 12360 Folio 189

Council has identified this public reserve as surplus to their needs. The site is 2.689ha and has no signs of being used for formal or informal recreational activity. The site is zoned for industrial purposes, and is adjacent to an existing industrial area. Council intends to sell the land to enable future compatible development of the land.

3. The PP will also rezone the following land:

a. 1 Sketchley Street, Raymond Terrace from 6(a) General Recreation 'A' to 2(a) Residential 'A'

This site is being used as a museum complex operated by a local community heritage organisation. Rezoning the land will better reflect the surrounding residential land uses.

b. 1 Lyndel Close, Soldiers Point from 6(a) General Recreation 'A' to 2(a) Residential 'A'
Council has identified this public reserve as surplus to their needs. Rezoning the land will better reflect the surrounding residential land uses.

c. 44A Squire Street, Fingal Bay from 6(a) General Recreation 'A' to 2(a) Residential 'A'
Council has identified this public reserve as surplus to their needs. Rezoning the land will better reflect the surrounding residential land uses.

d. 2 Ridgeway Avenue, Soldiers Point from 6(a) General Recreation 'A' to 3(a) Business General 'A'
The site is located adjacent to the Soldiers Point Marina, on the shores of the Port Stephens waterway. It is proposed to rezone the land to be consistent with the remainder of the Marina area and surrounds.

If the pending comprehensive Port Stephens LEP 2013 is published before this PP is finalised, then the PP will amend the Port Stephens LEP 2013 including:

1a. Amending Schedule 4 - Classification and reclassification of public land - Parts 1 and 2 as described and detailed in the section above.

2. Rezone and reclassify land at 1 Sketchley Street, Raymond Terrace by:

- a. Amending Land Zoning Map from RE1 Public Recreation to R2 Low Density Residential**
- b. Amending the Minimum Lot Size Map to 500 sqm**
- c. Amending the Maximum Height of Buildings Map to 9m**
- d. Amending the Land Reclassification Map from community land to operational land**

3. Rezone and reclassify land at 1 Lyndel Close, Soldiers Point Terrace by:

- a. Amending Land Zoning Map from RE1 Public Recreation to R2 Low Density Residential**
- b. Amending the Minimum Lot Size Map to 500 sqm**
- c. Amending the Maximum Height of Buildings Map to 9m**
- d. Amending the Land Reclassification Map from community land to operational land**

4. Rezone and reclassify land at 2 Ridgeway Avenue, Soldiers Point Terrace by:

- a. Amending Land Zoning Map from RE1 Public Recreation to B1 Neighbourhood Centre**
- b. Amending the Land Reclassification Map from community land to operational land**

5. Rezone and reclassify land at 44A Squire Street, Fingal Bay by:

- a. Amending Land Zoning Map from RE1 Public Recreation to R2 Low Density Residential**
- b. Amending the Minimum Lot Size Map to 500 sqm**
- c. Amending the Maximum Height of Buildings Map to 9m**
- d. Amending the Land Reclassification Map from community land to operational land**

6b. In addition to the land identified above, the PP will reclassify the following from community land to operational land:

- * 15 & 20 Enterprise Drive, Tomago**
- * 13 School Drive, Tomago**
- * 27 Garden Avenue, Raymond Terrace**
- * 77 Dawson Road, Raymond Terrace**
- * 9 Rosemount Drive, Raymond Terrace**
- * 44 Ferodale Drive, Medowie**
- * 1 & 2 Coachwood Drive, Medowie**
- * 9 Mitchell Street, Soldiers Point**
- * 8 Garuwa Street, Fingal Bay**

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

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

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

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Council has proposed a minimum 28 days for public consultation as the PP includes reclassification and rezoning of land. Council has identified that a public hearing will be required to be held in accordance with Department of Planning and Infrastructure Circular (PN09-003) after the close of the exhibition period.**

Additional Director General's requirements

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

If Yes, reasons : **The following matters are inconsistent with the s.117 Directions:**

2.2 Coastal Protection

Under cl.3, the s.117 Direction applies if the PP includes land within the coastal zone as defined under the Coastal Protection Act 1979. The following 5 sites are identified within the coastal zone. All sites are being reclassified as operational land.

*** 9 Mitchell Street, Soldiers Point**

*** 8 Garuwa Street, Fingal Bay**

The following three sites are being also being rezoned:

*** 2 Ridgeway Avenue, Soldiers Point**

*** 1 Lyndel Close, Soldiers Point**

*** 44A Squire Street, Fingal Bay**

Council has identified that the PP is inconsistent with cl.4 of the s.117 Direction, but considers the inconsistency is justified under cl. 5(d) as being of minor significance.

Reclassification of land to operational status enables Council to potentially sell the land. However in these cases reclassification does not impact on their existing land use. The land being rezoned includes small allotments and will either clarify existing use rights (part of Soldiers Point Marina) or reflect the existing surrounding residential land. Part 8 of SEPP 71 – Coastal Protection, identifies the relevant matters for consideration when preparing an LEP in the coastal zone. These matters can be adequately addressed under Council's existing local planning controls and development assessment process. Any future development impact on the coastal zone will examine these matters and can be addressed adequately by legislative processes and local planning provision at development application stage.

Consequently, in accordance with cl. 5(d) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

2.3 Heritage Conservation

In accordance with cl.4 of the s.117 Direction, a PP must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage to an area, any Aboriginal objects, places or landscapes of heritage significance to Aboriginal culture and people. The PP contains two items of heritage significance:

* 1 Sketchley Street, Raymond Terrace – Sketchley's cottage has been nominated for heritage listing which is presently being considered by Council under a separate PP. A Port Jackson fig tree located on the road reserve immediately to the east of the land is also a listed heritage item. The PP will reclassify and rezone the land for residential purposes, however Council notes that the existing use of the site as a museum complex is not proposed to change as a result of the PP.

* 9 Mitchell Street & 2 Ridgeway Avenue, Soldiers Point – a search of the Australian Heritage Database shows that the Port Stephens Estuary is listed on the Register of the National Estate. The Aboriginal Heritage Information System (AHIMS) shows that 3 Aboriginal sites are recorded in or about the site.

Should development of the sites be proposed in the future, an extensive search of AHIMS would need to be undertaken, and relevant legislative procedures followed to review and protect heritage items. Consultation with representatives of the indigenous community would also be necessary.

However, the PS LEP 2000 and draft PS LEP 2013 have provisions that facilitate heritage protection. Council notes that the land at Soldiers Point will also follow the procedures set in Soldiers Point (Park) Plan of Management. There is also existing legislative provisions to assist with protection of aboriginal heritage and heritage items for instance within the National Parks and Wildlife Act 1974 and the Heritage Act 1977. Therefore heritage matters can be adequately addressed if sites are to be developed in the future.

Consequently, in accordance with cl.5 of this s.117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s.117 Direction are of minor significance.

3.5 Development Near Licensed Aerodromes

Under cl.3, the s.117 Direction applies if the PP will create, alter or remove a zone or provision relating to land in the vicinity of a licensed aerodrome. Four sites are affected by an ANEF contour greater than 20, according to ANEF 2025.

All four sites will be reclassified as operational land. Consequently Council is potentially able to sell the land. However reclassification does not impact on their existing land use. Three sites are small allotments 2016sqm, 294.4sqm & 377.1 sqm respectively, and zoned as public general recreation. Any future development of these sites will reflect general recreational uses in this zone, and thus aircraft noise will potentially have a minimal impact. These sites are

- * 27 Garden Avenue, Raymond Terrace
- * 1 & 2 Coachwood Drive, Medowie

The following site is also a small allotment being 1845sqm, and is already located within an existing residential zone which have addressed aircraft noise impacts.

- * 77 Dawson Road, Raymond Terrace

Any impact from aircraft noise will be addressed utilising Council's aircraft noise policy and AS 2021. These policies are considered in any future development applications applying to the land. Both the Port Stephens LEP 2000 and pending draft PS LEP 2013

also include specific provisions that address the requirements in cl.6 of this s.117 Direction which relate to rezoning land. Consequently aircraft noise matters can be adequately addressed through legislative processes and local planning provisions at development application stage.

In addition to the above processes, to comply with cl.4 of this s.117 Direction, and to enable examination of the consistency with this Direction, the Council must consult with the Department of Defence following receipt of the Gateway Determination.

4.1 Acid Sulfate Soils

Under cl.6, of the s117 Direction, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing appropriateness of the change of land use given the presence of ASS.

6 sites are all being reclassified as operational land, and are identified as Class 4 on the 'Potential Acid Sulfate Soils Planning Map' of the PS LEP 2000:

- * 15 & 20 Enterprise Drive, Tomago
- * 13 School Drive, Tomago
- * 9 Mitchell Street, Soldiers Point

Two of those sites are also to be rezoned for residential and business purposes respectively.

- * 1 Sketchley Street, Raymond Terrace
- * 2 Ridgeway Avenue, Soldiers Point

A further nine sites are all being reclassified as operational land, and are identified as Class 5 on the 'Potential Acid Sulfate Soils Planning Map' of the PS LEP 2000:

- * 27 Garden Avenue Raymond Terrace
- * 9 Rosemount Drive, Raymond Terrace
- * 77 Dawson Road, Raymond Terrace
- * 1 & 2 Coachwood Drive, Medowie
- * 8 Garuwa Street, Fingal Bay
- * 44 Ferodale Road, Medowie

Of those, two sites are also to be rezoned for residential purposes.

- * 44A Squire Street, Fungal Bay
- * 1 Lyndel Close, Soldiers Point

The rezoning and reclassification of land will enable intensification of the land. However, the sites are identified as being affected by Class 4 and Class 5 Acid Sulfate Soils, which generally can be satisfactorily managed as part of the development process as they have a lower risk. All development applications will be assessed against the acid sulfate soil provisions within the PS LEP 2000 or pending draft PS LEP 2013. Therefore matters relating to acid sulfate soils can be adequately addressed under existing legislative provisions and local planning provisions.

Consequently, in accordance with cl. 8(b) of this s.117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s.117 Direction are of minor significance.

4.3 Flood Prone Land

Under cl.3 of the s.117 Direction this direction applies when a PP creates, removes or alters a zone or a provision that affects flood prone land. The following sites are identified as being flood prone land. All 3 sites are being classified as operational land, and 1 Sketchley Street, Raymond Terrace is also being rezoned.

* 1 Sketchley Street, Raymond Terrace – although the site will be rezoned for residential purposes, Council notes the site is within an existing residential area and the use of the site as a museum complex is not proposed to change as a result of the PP.

* 15 Enterprise Drive, Tomago – Council will retain ownership of the site. Council states that reclassifying the site to operational land will better reflect the use of the land as a detention basin. Council notes it may investigate use of the site to complement adjoining land uses, however a drainage study will be required. This study will examine the level of risk to life and property and the impact of the development on flooding in association with any development application to intensify the use of this site.

* 13 School Drive, Tomago – the site is a narrow strip of land between the adjoining industrial land and the street frontage. The adjacent developed industrial land is also flood prone but has been developed.

The 3 sites although identified as being flood prone, are small allotments, with existing uses. Potential impacts resulting from any future development can be adequately addressed through legislative processes and local flood planning provisions.

Consequently, in accordance with cl. 9(b) of this s.117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s.117 Direction are of minor significance.

4.4 Planning for Bushfire Protection

Under cl.3 of the s.117 Direction, this direction applies if the PP will affect, or is in proximity to land mapped as bushfire prone land. Nine sites are identified on Bushfire Prone Land. All the sites are being reclassified to operational land. Consequently Council is potentially able to sell the land.

- * 15 & 20 Enterprise Drive, Tomago
- * 44 Ferodale Road, Medowie (vegetation buffer)
- * 1 & 2 Coachwood Drive Medowie (vegetation buffer)
- * 8 Garuwa Street, Fingal Bay (vegetation buffer)
- * 13 School Drive, Tomago

Of these, two sites are also being rezoned:

- * 1 Lyndel Close, Medowie (vegetation buffer)
- * 44A Squire Street, Fingal Bay (vegetation buffer)

The sites being rezoned are small allotments located within existing residential areas. Potential impacts resulting from any future development can be addressed through legislative processes and local planning provisions.

Also, in accordance with cl.4 and cl.7 of the s.117 Direction, to enable examination of the consistency with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination.

6.2 Reserving Land for Public Purposes

The PP is seeking to reclassify and rezone land. In accordance with cl.4 of the s.117 Direction, a PP must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the DG of Planning. Council has identified that the land is surplus land or provides better management processes of their recreational open space network. The PP will formalise the approval process. It is noted that the PP will require review by the Governor who will need to discharge from various land parcels their 'public reserve' status and trusts, interests etc

The following SEPPs are applicable to the PP and have been addressed in the PP:

SEPP 55 – Remediation of Land

In accordance with cl. 6, when preparing a draft LEP Council must consider whether the land is contaminated and be satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes on which the land in the zone concerned is permitted to be used. If remediation is required, Council needs to be satisfied that the land will be so remediated before the land is used for that purpose.

Council has indicated that 3 sites are proposed to be rezoned for residential purposes as part of the PP:

* 1 Sketchley Street, Raymond Terrace – Council notes the site use will not change as a result of the rezoning, it will continue as a museum complex. As such, Council states there is no potential for the site to be used for residential purposes.

* 1 Lyndel Close Soldiers Point

* 44A Squire Street, Fingal Bay

Both of the above sites are public reserves retained as natural bushland. There is no development history relating to either site. Council is satisfied that both sites do not have potential for the land to be contaminated.

Council's local planning provisions can address any future development on the site and assess any need for further contamination assessment.

SEPP 71 – Coastal Protection

Five sites are identified within the coastal zone. All sites are being reclassified as operational land.

* 9 Mitchell Street, Soldiers Point

* 8 Garuwa Street, Fingal Bay

Three of these sites are being also being rezoned:

* 2 Ridgeway Avenue, Soldiers Point

* 1 Lyndel Close, Soldiers Point

* 44A Squire Street, Fingal Bay

Reclassification of land to operational status enables Council to potentially sell the land. However reclassification does not impact on their existing land use. The land being rezoned includes small allotments and will either clarify existing use rights (part of Soldiers Point Marina) or reflect the existing surrounding residential land. Part 8 of SEPP 71 – Coastal Protection, identifies the relevant matters for consideration when preparing an LEP in the coastal zone. These matters can be adequately addressed under Council's existing local planning controls and development assessment process. Any future development impact on the coastal zone will examine these matters and can be addressed adequately by legislative processes and local planning provision at development application stage.

SEPP 44 – Koala Habitat Protection

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) (2001) implements the provisions of SEPP 44. There are various categories of significance identified within the CKPoM.

Nine sites have been categorised as 'mainly cleared' under CKPoM, including:

* 27 Garden Avenue, Raymond Terrace

* 9 Rosemount Drive, Raymond Terrace

- * 77 Dawson Road, Raymond Terrace
- * 1 & 2 Coachwood Drive, Medowie
- * 9 Mitchell Street, Soldiers Point

Of these, three sites are also being rezoned as part of this PP:

- * 1 Lyndel Close, Soldiers Point
- * 44A Squire Street, Fingal Bay
- * 2 Ridgeway Avenue, Soldiers Point

All sites are being reclassified as operational land. Consequentially Council is potentially able to sell the land. However reclassification does not impact on the existing land uses. The sites being rezoned are small allotments located within existing residential areas or will reflect the existing use of the marina. Potential impacts resulting from any future development can also be addressed through legislative processes and local planning provisions which will also consider the CKoPM.

The following sites have been categorised as 'supplementary habitat' and 'mainly cleared' under the CKPoM:

- * 15 & 20 Enterprise Drive, Tomago
- * 8 Garuwa Street, Fingal Bay
- * 13 School Drive, Tomago

All sites are being reclassified as operational land. Consequentially Council is potentially able to sell the land. However reclassification does not impact on the existing land uses. The existing use of the land and their limited size including use as a detention park, a pocket park public reserve and frontage to industrial land respectively, limits future development of the land. Also, any proposed future development of these land would consider the CKoPM in any development application over the land.

* 1 Sketchley Street, Raymond Terrace – categorised as 'preferred' and '50m buffer over preferred'.

This land will be rezoned for residential purposes to reflect the existing surrounds. However, Council indicates that this land will still remain utilised as a museum complex and thus is likely to have minimal impact on the vegetation.

* 44 Ferodale Road, Medowie – categorised as '50m buffer over cleared' over the south-eastern half of the allotment and 'link over cleared' over the north-western half of the allotment.

This land is presently utilised a community centre.

Consequently, any proposed future development of the lands identified above would consider the significance of the vegetation and CKoPM in the development application. Council's local planning provisions and legislative requirements can adequately address these issues.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

Sufficient information has been provided to assess the proposal in preparation of the Gateway Determination.

Proposal Assessment

Principal LEP:

Due Date : **December 2013**

Comments in relation
to Principal LEP :

The draft Comprehensive Port Stephens LEP 2012 (PS LEP 2012) received a Gateway Determination on 17 July 2012. The PS LEP 2012 was publicly exhibited and has been re-submitted to the Department for review pending the LEP being made.

Assessment Criteria

Need for planning
proposal :

Council indicates that the PP is an outcome of the Open Space Consolidation Review that was adopted by Council on 27 November 2007. The review identified a number of sites that were surplus to Council's open space requirements based on a set of criteria which reflected Council's open space standards of provisions.

Council's 2010 draft Open Space Strategy re-examined the 2007 review and resulted in a number of sites being recommended for reclassification to operational land. This PP will facilitate Council's improved management regimes of its open space, and three lots will be rezoned for residential purposes assisting to supply land for a diverse range of housing in the Port Stephens Local Government Area.

Consistency with
strategic planning
framework :

Lower Hunter Regional Strategy (LHRS)

The sites are not specifically identified in the LHRS, however the proposed land rezoning and land re-classification outcomes are consistent with the objectives and outcomes of the LHRS. The PP will encourage residential infill development and increased housing choice.

Council notes that the proposal is not within the LHRS green corridor nor is it contrary to the Lower Hunter Conservation Plan.

Integrated Strategic Plan (Port Stephens 2022)

The PP notes the planning principles of the strategy, and the proposal's consistency with the Strategy.

Port Stephens Planning Strategy 2011

The PP notes the planning principles of the strategy, and the proposal's consistency with the Strategy.

Comprehensive Open Space Consolidation Review 2007 and draft Open Space Strategy 2010 (Port Stephens Council)

The PP will assist Council with its management of open space, and is consistent with the goals of these Strategies.

Environmental social
economic impacts :

The PP has considered the social, economic and environmental impacts of the rezoning and reclassification of land for operational purposes. Council notes that possible community reaction to the rezoning and reclassification process will be determined through the public exhibition and public hearing process as part of the PP.

Land rezoned for residential purposes may potentially increase the supply of housing and employment generation as a result of development. There may also be a potential increase in employment opportunities associated with industrial development. The PP will also enable a better management regime of Council's open space areas. The future development of the sites may lead to potential loss of vegetation on a number of sites, however these impacts will be assessed as part of the development assessment process in accordance with legislative and local planning provisions.

Council's Environmental Services Section has proposed additional coastal vegetation regeneration plantings in coastal reserves as an off-setting measure for the disposal of Council owned lands.

Administrative Amendment - Port Stephens LEP 2000

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **DDG**

Public Authority **NSW Rural Fire Service**
Consultation - 56(2)(d) **Other**

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
Council_Report_&_Resolution_13_November_2007.pdf	Study	Yes
Planning_Proposal_Maps_reclassification_&_rezoning.pdf	Map	Yes
Attachment_2_Sites_identified_for_rezoning_&_reclassification_planning_proposal.pdf	Study	Yes
Planning_Proposal_Maps_reclassification_&_rezoning.pdf	Proposal	Yes
Covering_Letter_Planning_proposal_Port_Stephens_LEP_2000_reclassification_&_rezoning.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**

4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes

Additional Information : It is recommended that:

1. Support the Planning Proposal and proceed subject to the following conditions:

2. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:

(a) the Planning Proposal be made publicly available for 28 days.

(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009)

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

* NSW Rural Fire Service

* Department of Defence

Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the Planning Proposal.

4. The Director General (or delegate) agree with the following section 117 Direction inconsistencies –

2.2 Coastal Protection; 2.3 Heritage Conservation; 4.1 Acid Sulfate Soils; and 4.3 Flood Prone Land; as the inconsistency with the terms of the s.117 Direction are of minor significance

Consultation is required with the Department of Defence, and NSW Rural Fire Service to determine consistency with section 117 Directions – 3.5 Development Near Licensed Aerodromes and 4.4 Planning for Bushfire Protection respectively. Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

5. 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 submission if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the Gateway Determination.

7. Council not exercise their delegations under section 59(1) of the EP&A Act.

Supporting Reasons :

* Port Stephens Council has identified the need for this administrative amendment to meet the operational needs of Council. Council has determined through its review process and various strategies to rezone or reclassify the land. This land was either considered to be surplus to Council's needs, or required reclassification to operational land to facilitate greater flexibility in management of the site.

* A 12 month timeframe is appropriate as this PP includes reclassification and a public hearing is required.

* As the PP includes reclassification of public land that will require the Governor to discharge 'public reserve' status, trusts, interests etc from the land, Council should not exercise their delegations under section 59(1) of the EP&A Act.

Administrative Amendment - Port Stephens LEP 2000

Signature:



Printed Name:

K. O'FLAHERTY

Date:

24-5-2013