

LEP Review Panel Consideration

SECTION 54(4) NOTIFICATION ADVICE



NSW GOVERNMENT
Department of Planning

30 July 2009

Port Stephens - N09/00079-1

Details: Port Stephens LEP 2000, Soldiers Point

- LEP to rationalise the zoning and classification of mostly Council owned land at Soldiers Point. A parcel of privately owned land off Diemars Road is included
- Site 3 Soldiers Point Road – reclassify existing Industrial land to operational and rezone part of the site to Industrial
- Site 4 Stoney Ridge Reserve – rezone from 6(a) Recreation to 7(a) Environment Protection
- Site 5 Soldiers Point Road – rezone land from 6(a) Recreation to 7(a) Environmental Protection. Fleet Street – rezone that part of the site zoned 6(a) Recreation to 7(a) Environmental Protection and reclassify this part of the site to Community
- Site 7 Diemars Road – rezone Quarry site and surrounding land to 'urban purposes' and Environment Protection (or Open Space); rezone privately owned Industrial land to Environment protection (or Open Space)
- Site 8 Homestead Street – rezone land from 6(a) Recreation to Residential and Environment protection

Recommendations:

LEP should proceed?

Yes ☒ / No ☐

Reasons

- Sites 3,4, and parts of sites 7&8 to proceed as proposed by Council
- Quarry Site in Diemars Road to be deferred until more information is available relating to the impacts of the specific zones proposed
- Privately owned land to be rezoned to Environment Protection only if there is no objection from land owner. If Council intends to zone this Land Open Space with an associated acquisition clause then owners agreement is not necessary

Consistent with Regional/Subregional Strategy?

N/A ☐ Yes ☒ / No ☐

Details

- The existing Quarry site is not included in Council's draft Settlement Strategy

Environmental Study needed:

- Not required ☒
- Not required – address issues (List separately) ☐
- Study required – no specifications ☐
- Study required – with specifications (List separately) ☐

Delegation of functions to Council for Section 65:

- a) No delegation ☐
- b) Delegation subject to conditions (specify) ☐
- c) Full delegation ☒

Delegation of functions to Council for Section 69:

- a) No delegation ☐
- b) Delegation subject to conditions (specify) ☐
- c) Full delegation ☒

Any s.62 consultation advice for Council?

- Nil

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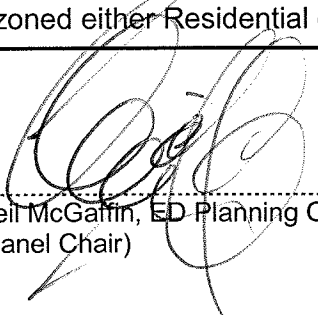
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Additional advice to Council:

- Site 7 – The land owned by Council which is proposed to be zoned Environment Protection or Open Space can proceed as part of this LEP
- Site 7 – The land proposed as an "Urban Zone" (quarry site) is not to proceed as part of this LEP. Council should prepare the necessary studies and consult with appropriate agencies prior to seeking a separate Gateway determination under Part 3 of the EPA Act for the specific zones proposed.
- Site 7 – The Privately owned land currently zoned Industrial is to be zoned Open Space only if there is an obligation on Council to acquire the land on the owner's request. An Environmental Protection zone is not to be exhibited without prior consultation with and agreement of the owner
- Site 8 – Land to the north of the proposed Residential zoning is to be included in this LEP and zoned either Residential or Environmental Protection based on Council's investigations

Signed:


Neil McGaffin, ED Planning Operations
(Panel Chair)

Date:

3.8.09

Recommendation Endorsed:


Sam Haddad
Director General

Date:

3/8/2009.

Department of Planning Section 54(4) Notification Advice

Regional Team to complete

Date Received: 29 May 2009

Council Contact for Panel Meeting

Name: Matthew Borsato

Position: Strategic Planner

Phone Number: 02 49800247

Resolution Date: 25 November 2008

If additional information requested from Council:

Date Requested: 23 June 2009

Date Received from Council: 22 July 2009

New Principal LEP Due: Please tick ☒

March 2008 ☐ March 2009 ☐ March 2011 ☒ Other agreed date

LGA: Port Stephens Council

Name of Plan: Port Stephens Local Environmental Plan 2000

Subject Land Description:

Please note, Sites 1, 2, 6 & 9 identified in the Council Report have been removed from the draft LEP.

Site 3: (a) 314 Soldiers Point Road, Soldiers Point – Lot 1 DP 263269

(b) 308 Soldiers Point Road, Soldiers Point – Lot 600 DP 27382

Site 4: Stoney Ridge Reserve, Soldiers Point – Lot 51 DP 803471

Site 5: (a) 160B Soldiers Point Road, Soldiers Point – Lot 3 DP 791551

(b) 160A Soldiers Point Road, Soldiers Point – Lot 164 DP 27047

(c) 8 Fleet Street, Soldiers Point – Lot 2 DP 791551

Site 7: Diemars Quarry

(a) 1 Diemars Road, Soldiers Point – Part Lot 51 DP 803471 (Quarry site)

(b) 25 Diemars Road, Soldiers Point – Lot 54 DP 260211

(c) 27 Diemars Road, Soldiers Point – Lot 56 DP 618505

Site 8: 22 Homestead Street, Soldiers Point – Lot 598 DP 27382

NOTE: All individual sites listed above are shown on the maps in TAG B.

Purpose of Plan:

Site 3: (a) Reclassify industrial zoned, community land to operational. The site is bound on two sides by light industrial premises and on the other sides by two roads. It is used informally as a carpark by adjoining businesses.

(b) Reclassify northern part to operational and retain community classification on southern part. The site is currently zoned 6(a) General recreation and it is proposed to zone the southern portion 4(a) General industrial.

Site 4: Rezone Stoney Ridge Reserve from 6(a) General Recreation Zone to 7(a) Environment Protection Zone.

Site 5: (a) Rezone land from 6(a) Recreation General to 7(a) Environmental Protection. Retain community classification.

(b) Rezone land from 6(a) Recreation General to 7(a) Environmental Protection. Retain community classification.

(c) (Fleet Street) The site is currently classified as Operational land. The site is currently split by 2(a) Residential and 6(a) General Recreation zones. The 6(a) zoned land is proposed to be changed to 7(a) Environment protection and reclassified to Community.

Site 7: Diemars Quarry

(a) Rezone Diemars Quarry from 6 (a) General Recreation to a zone that will permit urban

development and partially permit wildlife corridor and reclassify the land from Community to Operational. Also investigate land adjoining to the west to be rezoned from 4 (a) General Industrial to an open space zone.

(b) Privately owned land currently zoned 4(a) Industrial General proposed to be rezoned to Open space or Environment Protection.

(c) Privately owned land currently zoned 4(a) Industrial General proposed to be rezoned to Open space or Environment Protection.

Site 8: Rezone the land from 6(a) General Recreation to 2(a) Residential and 7(a) Environmental Protection and investigate triangular piece of land directly to the north which forms part of the south/eastern boundary of Stoney Ridge Reserve.

Has Council provided the relevant information:

- | | |
|---|-----|
| a) Section 54(4) Notification Advice Cover Sheet and supporting documentation | Yes |
| b) Adequate information in relation to clause 9 of the EP&A Regulation | Yes |
| c) LEP Proforma Evaluation Criteria | Yes |

If **No**, what additional information is required:

Council's S54 Notification Advice and LEP Pro-Forma evaluation is TAG A.

Is Council's s.62 consultation procedure for the draft LEP adequate: No

Council intends to consult with RTA, DECC, DPI, Energy Australia, Hunter Water Corporation, Worimi Local Aboriginal Land Council, RFS, Hunter and Central Rivers CMA.

In addition to the above agencies, it is recommended Council consult with NSW Marine Park Authority in relation to the LES and the draft LEP for Site 7(a) Diemars Quarry, regarding the impact of proposed urban run off into Port Stephens-Great Lakes Marine Park.

Background:

Port Stephens Council's Facilities Services Group and Commercial Services Group undertook a review of Council's Tomaree Peninsula property portfolio in 2006. A number of properties were identified as being zoned or classified surplus to or contrary to in Council view, the highest and best use of the land. As a result, Council's Sustainable Planning Group, as the local planning authority, engaged Strategy Hunter Consultants to review the identified sites giving consideration to their environmental, economic and social values and Eco Logical to prepare an ecological assessment.

Eco Logical Australia Pty Ltd prepared *Port Stephens Environmental Significance Review December 2007* (TAG C) assessing the conservation value of the nine parcels of Council-owned land. Through this review, individual site inspections were made between 15 – 19 October 2007. Vegetation mapping validation and habitat assessment was compiled to inform planning advice in relation to strategic conservation and development outcomes.

Strategy Hunter Consultants produced *Strategic Overview – Council owned lands at Salamander / Soldiers Point January 2006* (TAG D) which refers to the findings of the *Environmental Significance Review*. The Strategy Hunter report was used to inform the s54 recommendation for the draft LEP. The final Council s54 resolution did not to include all of the nine (9) sites because some sites were already being dealt with under separate draft LEPs. Council's s54 resolution included additional, strategically logical sites that were not identified in the original Tomaree Peninsula property review. All sites that are subject to this draft LEP are listed above under Subject Land Description.

Been to Panel Before: No **If Yes - Panel Date:**

Part 3A Applicable No

Comment:

Heritage Applicable No

Comment:

Coastal Zone Applicable Yes

Comment: Soldiers Point is a 7 kilometres wide peninsula, projecting northward into Port Stephens and is surrounded by the *Port Stephens-Great Lakes Marine Park* on three sides. Site 7(a) Diemars Quarry is of significance to the Marine Park particularly in relation to resultant discharge of storm water from the site into the *Sanctuary Zone* at Cromarty Bay.

Is the proposed draft LEP consistent with:

- a) Metropolitan/Subregional/Regional Strategies

Yes

Lower Hunter Regional Strategy

All sites are located in Soldiers Point which is identified as an existing urban area under the Regional Strategy. The infill development proposed in the draft LEP is consistent with an existing urban area. However, the LHRS does not identify these individual sites for development and the Sustainability Criteria applies on a site-by-site basis.

Site 7(a) Diemars Quarry requires further analysis under the following Criteria particularly in relation to;

3. Housing Diversity: further investigation is required into the cost of servicing an affordable residential development in Diemars Quarry which could make development cost-prohibitive. Connecting water and sewer to the site will require reticulation through a 10-13 metre high rock formation to reach existing services in Homestead Street.

5. Avoidance of Risk: Analysis of the stability of the quarry wall for slope and erodability is necessary for residential development to occur. Also safe evacuation under bushfire needs to be determined as only one road in and out is proposed.

7. Environmental Protection: It is necessary to determine that the existing aquatic biodiversity in *Sanctuary Zone* at Cromarty Bay will be protected as a result of urban development on the site.

- b) Council's planning strategies

Yes and No

Port Stephens Community Settlement and Infrastructure Strategy 2007 (CSIS)

Council's Settlement Strategy is not endorsed by the Department and is currently under review to ensure consistency with the LHRS. There is no Port Stephens Council local area strategy identifying Soldiers Point. Although the Settlement Strategy is currently under review and considerable change is being made to its format and content, the majority of the proposed rezonings appear to be consistent with the Settlement Strategy.

However Site 7(a) Diemars Quarry is inconsistent with the CSIS as the site does not immediately adjoin an existing urban area. The site is 800 metres from the existing shopping centre and 200 metres from the nearest residential land.

- c) S.117 directions

No

1.1 Business and Industrial Zones.

The draft LEP proposes to rezone Sites 7(b) & (c) from 4(a) Industrial General to an open space zone. The *Strategic Overview* recommends the privately-owned land be zoned 6(a) General Recreation land 'in order to consolidate the industrial area and to reflect the values of the adjacent *Sanctuary Zone* of Port Stephens Marine Park' and improve public access to the foreshore. Council's Foreshore Management Plan (FMP) recommends foreshore sites to be zoned 6(a) General Recreation. Sites 7(b) & (c) are not identified for acquisition in the FMP however it will be necessary to consult with the private land owner.

It is unknown at this stage if forfeiting the 4(a) Industrial General zone over Sites 7(b) & (c) is of minor significance as the land owners have not been consulted and there is no established link between selling 9B Diemars Road and acquisition of 25 and 27 Diemars Road. 9B Diemars Road does not form part of the draft LEP. It is recommended that Council demonstrate the proposal for Sites 7(b) & (c) is of minor significance in relation to Direction 1.1 as part of the s64.

1.4 Oyster Aquaculture

It is necessary to determine potential impacts from development of Site 7(a), Diemars Quarry, on Cromarty Bay. The existing oyster leases down stream of the site are identified as a 'priority oyster aquaculture area' under the *NSW Oyster Industry Sustainable Aquaculture Strategy 2006* called up under this Direction. Council is required to demonstrate post-development stormwater discharge from the site will not impact on the 'priority oyster aquaculture area'.

2.2 Coastal Protection

All subject sites are in the coastal zone and Council is required to include provisions that give effect to the NSW Coastal Policy 1997 and Coastal Design Guidelines 2003. This is necessary to justify that the proposed development will be in accordance with the requirements of the Coastal Design Guidelines 2003 where infill residential development is proposed in an established settlement. This is the case for Sites 5(c) Fleet Street and 7(a) Diemars Quarry.

3.4 Integrating Land Use and Transport

Direction 3.4 requires that Site 7(a), Diemars Quarry, give effect to the aims, objectives and principles of *Improving Transport Choice – Guidelines for planning and development (DUAP 2001)* and *The Right Place for Business and Services – Planning Policy (DUAP 2001)*. The site is isolated from the existing urban area, separated by a habitat corridor from public transport and shops. The habitat corridor prohibits a second egress out of the site reducing safe and efficient access.

4.4 Planning for Bushfire Protection

Direction 4.4 applies to Site 7(a) Diemars Quarry in relation to placing inappropriate developments in hazardous areas. The proposed residential settlement will be surrounded on three sides by closed forest served by one evacuation route.

6.2 Reserving Land for Public Purposes.

Direction 6.2 applies to; Site 4 Stoney Ridge Reserve, Site 5(a), 5(b) and 5(c) (160A & 160B Soldiers Point Road) as the draft LEP proposes to rezone land from 6(a) General Recreation to 7(a) Environmental Protection on these sites. Where the provisions of the draft LEP are inconsistent with this Direction, they are of minor significance as public access will be retained and protection of the existing vegetation will be improved for the purpose of public benefit. In addition to Site 5(c) Fleet Street, further consideration to any adjustment of the zone boundary between the proposed 2(a) and 7(a) zones requires thorough examination of the conservation significance and spatial distribution of Threatened Species on site.

Site 3(b) 308 Soldiers Point Road; The draft LEP proposes that the southern portion of this 6(a) General Recreation site be rezoned to 4(a) Industrial General. The *Strategic Overview* recommended that Council 'examine the desirability of carrying out this rezoning between the intersections of George Street pending the assessment of wildlife movement corridors in conjunction with the introduction of traffic management devices to reduce vehicle speeds'. The *Environmental Significance Review* did not assess this site and therefore analysis of the environmental significance of this site within the surrounding habitat corridors is necessary to determine if the draft LEP can be considered of minor significance in relation to Site 3(b).

Site 7(a) Diemars Quarry; the site is classified Community and zoned 6(a) General Recreation but has operated as a quarry since the 1940s. Despite its past resource extraction use, the site is located in the middle of the conservation corridor linking Stoney Ridge Reserve and Cromarty Bay wetland. Urban development of this land that is reserved for public purposes will exacerbate the Cromarty Bay corridor 'bottleneck' identified in the *Environmental Significance Review*. Whereas, retention of the land as community land and remediation / revegetation of the site will secure the conservation corridor for public purposes. Council is required to demonstrate that urban development of Diemars Quarry is consistent with this Direction or is of minor significance.

Site 8 – 22 Homestead Street; the site is currently classified Operational and zoned 6(a) Recreation General and is proposed to be 2(a) Residential and 7(a) Environmental Protection. The site adjoins residential land to the north and east. The site is an unmaintained, partly vegetated paddock and is not currently used for public recreation. It is recommended that the western and southern vegetated portions of the lot be zoned 7(a) Environmental Protection where contiguous to the Cromarty Bay corridor. The provisions of the draft LEP that are inconsistent with this Direction in relation to Site 8 are considered to be of minor significance.

- Is the Director-General's agreement required?	Yes
d) Standard Instrument (LEPs) Order 2006	Yes
e) State Environmental Planning Policies	No

SEPP 44 – Koala Habitat Protection

SEPP 44 applies to Port Stephens and calls up Port Stephens' *Comprehensive Koala Plan of Management (CKPoM)*. The CKPoM requires that no development shall occur in areas identified as Preferred Koala Habitat or defined habitat buffers. Preferred Koala Habitat and buffers are identified on Site 7(a) Diemars Quarry, Site 8 Homestead and Site 5(c) 8 Fleet Street. The CKPoM requires amendment if Preferred Koala Habitat or Buffers are to be rezoned for urban development and amendment requires the endorsement of the Department of Planning Director General.

SEPP 55 Remediation of Land

SEPP 55 applies to Site 7 Diemars Quarry in that development of that land requires remediation of a

potentially contaminated site. It is necessary for this matter to be addressed in the LES for Site 7(a).

f) REPs

N/A

If **No** to any of the above, explain:

Are inconsistencies justified:

Unknown

Explain:

Council should reconsider the SEPP and 117 Direction issues identified above given that they were not adequately considered in the s54 advice. Council's review of this information should occur prior to s64.

Also as discussed above, inconsistency with s117 Directions will depend on whether Council is able to obtain the approval of the Director General prior to s64.

Inconsistencies in relation to Site 7(a) Diemars Quarry should be addressed in the LES.

Advice:

If consistency not known at this point, are there any particular matters for Council's consideration in preparing the draft LEP?

S117 Directions

Any inconsistencies with the Minister's S117 Directions will need to be justified and approved by the Executive Director utilising the Director General's delegations before the draft LEP can be certified for exhibition.

The Director General's approval will be required for the draft LEP's inconsistencies with S117 Directions 1.1 Business and Industrial Zones, 1.4 Oyster Aquaculture, 2.2 Coastal Protection, 3.4 Integrated Land Use and Transport, 4.4 Planning for Bushfire and 6.2 Reserving Land for Public Purposes. These inconsistencies need to be justified to the Director General prior to s64.

It is recommended that Site 7(a), Diemars Quarry site, be separated from this draft LEP and managed as a separate amending LEP in order to address those issues identified in Schedule 1.

Is the provision and funding of state infrastructure relevant to this plan

No

Explain:

RECOMMENDATION:

Preparation of draft LEP supported at this stage:

Yes

If Yes, explain the compelling reasons for this draft LEP to proceed at this stage:

Reasons: It is recommended to progress all sites under this draft LEP except for Site 7(a) Diemars Quarry. Those sites other than Site 7(a) Diemars Quarry should progress at this time as there may be significant public benefit and positive conservation outcomes as a result of the draft LEP. It is recommended that Site 7(a) Diemars Quarry progress under a separate draft LEP due to its complicated nature and the proposal's possible adverse environmental impacts.

If No:

Reasons:

Environmental Study needed: Please tick ☒

- Not required
- Not required - address issues (List separately)
- Study required - no specifications
- Study required - with specifications (TAG X)

All other sites ☒

☐☐

Site 7(a) Diemars Quarry ☒

A set of specifications is provided in Schedule 1 in accordance with Council's decision to prepare an Environmental Study for Site 7(a). The specifications contain the issues Council has indicated will require consideration in the study and matters arising out of assessment of the material provided.

Delegation:

Delegation of functions to Council for Section 65:

- a) no delegation
- b) delegation subject to conditions (specify)
- c) full delegation



Delegation of functions to Council for Section 69:

- a) no delegation
- b) delegation subject to conditions (specify)
- c) full delegation

**Other Comments:**

The following comments are a summary of comments made as they relate to specific sites in the Strategic Overview and Environmental Significant Report. These comments also identify additional sites that were included in Council's Project Planner's recommendation based on strategic analysis of the locality. These comments also identify the unresolved views of Council's consultants in relation to specific sites.

Sites 5(a) & (b): These sites were included in the draft LEP as a recommendation by Council's project planner based on strategic analysis of the locality. These parcels are not discussed specifically in either the Environmental Significance Review or the Strategic Review.

*Site 5(c) 8 Fleet Street: The Environmental Significance Review identifies the EEC Swamp Sclerophyll Forest and threatened species *Callistemon linearifolius* and *Corybas dowlingii* are in conflict with the 2(a) Residential Zone. However, the Strategic Overview recommends that due to threatened species, further environmental studies are required to delineate a suitable development boundary to the vegetation and that urban development compatible to sensitive ecosystems is required.*

Sites 7 & 8: The Environmental Significance Review attributes high value to the interconnectivity of the corridor between Site 7(a) Diemars Quarry and Site 8 (Homestead Street). Strategically, the Cromarty Bay corridor 'bottle necks' in this locality and clearing needed for a service easement will degrade this corridor further. Eco Logical recommends consolidation and regeneration measures within the corridor if development on Sites 7(a) & 8 is supported.

The Strategic Review recognises the corridor's significance and that it should be zoned a suitable conservation zone. It is recommended that due to the 'unusualness' of the Quarry site, separate expression of interest from the market is sought. It is recommended that the development of the 3.8 hectare Homestead site be integrated with the Quarry due to the necessary link with infrastructure.

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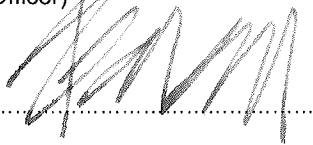
Signed:


(Action Officer)

Print Name: Paul Maher

Phone Number: 02 49042719

Endorsed:



Date:

22/7/09