



NSW GOVERNMENT
Department of Planning

Office of the Director-General

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Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Our ref: N09/00079-1
Your ref: PSC2007-2685

Dear Mr Gesling,

Re: Section 54(4) Notification – Draft Amendment to Port Stephens Local Environmental Plan 2000 – Land at Soldiers Point

I am writing in response to Council's letter dated 26 May 2009 advising, under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') in relation to land at Soldiers Point, in particular, the following sites:

- 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 – Part Lot 51 DP 803471 (as shown on the submitted plan titled "Site 4" and dated 14/07/09)

- 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 & Part Lot 51 DP 803471 (as shown on the submitted plan titled "Site 8" and dated 14/07/09)

The Department notes that Sites 1, 2, 6 and 9, identified in the Council Report, have been removed from the draft LEP.

The Council may now continue with the preparation of the draft LEP with the exception of part of Site 7 (Quarry Site) which should be removed from the plan. Council can include in the LEP the rezoning of that part of the Site 7 proposed to be zoned Environmental Protection.

It was considered premature to allow the rezoning of the Quarry Site at this point. Council should first identify the specific zones proposed following a strategic analysis of the appropriate land uses based on an assessment of the suitability and capability of the land for urban purposes.

In relation to Council's proposal to rezone privately owned land off Diemars Road from Industrial to either an Open Space or Environmental Protection zone, Council should ensure that the land owners are consulted prior to exhibition and that agreement is reached in relation to the terms of the Land Acquisition (Just Terms Compensation) Act 1991 in relation to possible owner initiated acquisition.

Consultation with the Department under section 62 of the Act is not required in this instance.

Council should ensure that relevant section 117 Directions are adequately addressed prior to exhibition of the draft plan. Where any applicable section 117 direction requires the Director-General to form an opinion or be satisfied as to certain matters, you need to ensure that this issue is addressed in submitting the draft LEP under section 64. I have noted that this plan is inconsistent or likely to be inconsistent with section 117 Direction 6.2 Reserving Land for Public Purposes. I have formed the opinion that the inconsistency is justifiable on this occasion as the plan is of minor significance. My further approval is, therefore, not required in relation to this matter.

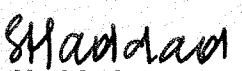
You will be aware that an instrument of delegation for my LEP making functions was executed on 16 February 2006. Use of the delegation for a draft LEP is conditional on receipt by Council of a Written Authorisation to Exercise Delegation.

I have now issued an Authorisation, together with guidelines on its use, which is attached. This will enable Council to certify the draft LEP once the amendments and considerations, requested above, are made. This should be done in consultation with the Department's Regional Team.

Please forward a copy of the section 65 certificate, the draft plan and any other information to be publicly exhibited with the draft LEP, to the Regional Office with advice to the Department as required under section 64 of the Act prior to the exhibition of the draft LEP.

Should you have any queries in regard to this matter please contact the Regional Office of the Department.

Yours sincerely


Sam Haddad
Director-General

enc

3/8/2009.



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

This is a Written Authorisation to Exercise Delegation ('Authorisation') made under the instrument of delegation executed by the Director General of the Department of Planning ('Director General') on 16 February 2006 ('Delegation').

Subject to the Delegation and the terms and conditions specified in Schedule 1 to this Authorisation, the following functions are delegated to Port Stephens Council ('Council') for the draft local environmental plan the subject of notification by Council to the Director General under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act') dated 26 May 2009, being in relation to land at Soldiers Point ('Draft LEP'), in particular, the following five (5) sites:

- 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 – Part Lot 51 DP 803471 as identified on the plan titled "Site 4" and dated 14/07/09

- 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 identified as Proposed Environmental Protection Zone
(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 and Part Lot 51 DP 803471 as identified on the plan titled "Site 8" and dated 14/07/09

- Section 65(1)
- Section 69(1)

Dated 3rd day of August 2009.

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Sam Gabriel Haddad
DIRECTOR GENERAL
Department of Planning



Schedule 1

The exercise of the function(s) under the Delegation is subject to:

1. the removal of Part Lot 51 DP 803471 Diemars Road as identified as "Proposed Urban Zone" on the plan titled "Site 7(a) 7(b) & 7(c)" and dated 14/07/09; and
2. the Draft LEP complying with any relevant Ministerial Direction issued pursuant to section 117 of the EP&A Act; and
3. the Draft LEP not being the subject of an unresolved objection by a public authority or body; and
4. the Draft LEP not containing provisions suspending laws pursuant to section 28 of the EP&A Act; and
5. compliance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 entitled, 'LEPs and Council Land - Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council'; and
6. compliance with instructions issued by the Director General with respect to the preparation and content of reports prepared pursuant to section 69 of the EP&A Act.



GUIDANCE IN THE USE OF THE WRITTEN AUTHORISATION TO EXERCISE DELEGATION

- The Authorisation attached means that Council is able to exercise the Director General's functions specified on the Authorisation in respect of the nominated draft LEP, and subject to the terms and conditions contained in the Authorisation.
- The Authorisation only applies to, and in respect of, the draft LEP referred to in the Authorisation.
- A copy of the Authorisation should be placed on exhibition with the section 65 certificate and other required material including relevant section 117 directions and the statement required by section 66(1)(b)(iii) of the Act, when exhibiting the draft LEP.
- Where any applicable section 117 direction requires the Director-General to form an opinion or be satisfied as to certain matters, you need to ensure that this is done before exercising functions under the delegation.
- Council is to ensure that all proper care is exercised in undertaking functions pursuant to the delegation as any invalid exercise of delegation will necessarily affect the validity of the resulting LEP. Please note that the delegation may be subject to amendment or revocation at any time (in which case the Council will be notified in writing).
- A copy of the Authorisation should be attached to Council's information when an Opinion is being sought from the Parliamentary Counsel and when sending the section 69 Report to the Minister.