

Three Ports SEPP amendment - BlueScope

Proposal Title : **Three Ports SEPP amendment - BlueScope**

Proposal Summary : **The proposal seeks to amend the State Environmental Planning Policy (Three Ports) 2013 to:**

- permit a men's shed on land off Visitor Rd, Port Kembla
- permit a car park for a place of worship on 1-3 Newcastle Road, Cringila
- introduce a heritage map showing the location of heritage listed items
- remove heritage listing for 'garden around former house and adjacent driveway' at 2 Electrolytic Street, Port Kembla
- permit a range of exempt and complying development on land outside of the 'Lease Area'
- permit the use of existing surplus administration buildings for temporary office use, provided the additional uses cease within 10 years or if the premises is sold
- permit the use of existing surplus industrial buildings, warehouse and hard stand areas for temporary light industrial, storage and distribution and warehousing uses (but not retail uses), provided the additional uses ceases within 10 years or if the premises is sold

PP Number : **PP_2016_WOLLG_005_00**

Dop File No : **16/07569**

Proposal Details

Date Planning
Proposal Received : **27-Jul-2016**

LGA covered : **Wollongong City**

Region : **Southern**

RPA : **Wollongong City Council**

State Electorate : **WOLLONGONG**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Land owned by Bluescope within the 3 ports SEPP area.**

DoP Planning Officer Contact Details

Contact Name : **Louise Myler**
Contact Number : **0242249463**
Contact Email : **louise.myler@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Jon Bridge**
Contact Number : **0242277576**
Contact Email : **jbridge@wollongong.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Graham Towers**
Contact Number : **0242249467**
Contact Email : **graham.towers@planning.nsw.gov.au**

Land Release Data

Growth Centre :	Release Area Name :
Regional / Sub Regional Strategy :	Consistent with Strategy :
MDP Number :	Date of Release :
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :
No. of Lots : 0	No. of Dwellings 0 (where relevant) :
Gross Floor Area : 0	No of Jobs Created : 0

The NSW Government **Yes**
Lobbyists Code of
Conduct has been
complied with :
If No, comment :

Have there been **No**
meetings or
communications with
registered lobbyists? :
If Yes, comment :

Supporting notes

Internal Supporting
Notes : **The initial proposal received from Council on 16 May 2016 contained a number of inaccuracies. The Department requested various changes, including the correction of the intended outcomes, and additional strategic justification.**

The Department has consulted with NSW Ports which appreciates the merits of BlueScope's request which would enable the utilisation of vacant buildings and provide facilities for community organisations. NSW Ports will be consulted further should the proposal proceed.

Transport NSW has also provided comments at this stage. They provide in principle support for the temporary use components of the proposal. They do not support the

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extension of Exempt and Complying provisions outside of the Lease Area. They will consulted further should the proposal proceed.

A site inspection was held on 7 June 2016 with Council, Department of Industry and Investment, and the Department of Planning and Environment (Southern Region - and Policy team) attending. Following the site inspection the Policy Team provided comments on the proposal that have been considered in reaching the recommendations of this report.

Further justification was sought from Council and a final updated proposal was received on 28 July 2016.

External Supporting
Notes :

The proposal aims to better utilise surplus buildings and land.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment :

The stated purpose of the planning proposal does not clearly identify all of the desired outcomes. It only refers to one aspect of the proposal (i.e. to facilitate improved temporary development outcomes) - and suggests that the changes to the Three Ports SEPP are consistent with the SEPP.

The wording of the Objectives/Intended Outcomes is confusing. Aspects of the proposal are inconsistent with the SEPP, hence Council's proposal to amend the SEPP.

It is recommended that the Gateway determination identify alternative wording to more clearly explain the multiple intended outcomes prior to exhibition.

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

Is an explanation of provisions provided? Yes

Comment :

The explanation of provisions describes the proposed changes to the SEPP.

One of the proposed outcomes is to allow surplus buildings/sites to be used for additional uses. The Report to Council indicates that this may be achieved through changes to Clause 23 Additional Permitted Uses of the SEPP. However, this is not mentioned in the Planning Proposal.

Schedule 23 of the SEPP currently permits the use of certain mapped sites and land within the Lease Area for business or office premises. This clause will need to be modified to cover the proposed uses such as warehousing and storage.

The explanation of provisions should be amended prior to exhibition to explain that modifications to Clause 23 of the SEPP will be required. The benefit of amending clause 23 is that an additional permitted uses map can be used to clearly define the areas to which the additional uses will apply.

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

1.1 Business and Industrial Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.4 Integrating Land Use and Transport

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

6.3 Site Specific Provisions

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 33—Hazardous and Offensive Development

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

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

Council has also identified the Three Ports SEPP; and State and Regional Development SEPP as being relevant.

The proposal is not consistent with the Standard Instrument for LEP's as it is proposed to amend the Three Ports SEPP.

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

If No, explain :

Section 117 Directions

Council has identified applicable Section 117 Directions and considers that the proposal is consistent with relevant Directions. Directions of particular relevance are discussed as follows:

1.1 Business and Industrial Zones

This direction aims to encourage and support employment in appropriate locations - and to retain existing areas identified for employment uses.

This proposal does not reduce available employment land and will enable the use of currently vacant and under-utilised industrial land and office buildings.

The proposal is considered to be consistent with this direction and no further approval is required.

2.3 Heritage Conservation

This direction aims to conserve items, objects and places of heritage significance.

This proposal will map heritage items currently listed in the SEPP. One existing item - a garden - will be removed to reflect that little of the garden remains and it does not warrant a heritage listing.

The proposal is considered to be consistent with this direction and no further approval is required.

4.1 Acid Sulfate Soils

This direction aims to avoid significant adverse impacts from the use of land containing acid sulfate soils by restricting the intensification of uses on such land.

This proposal applies to a small area of land that has been identified as containing acid sulfate soils. The proposal does not intensify the use of the land and does not offend the intention of this direction.

The proposal is considered to be consistent with this direction and no further approval is required.

4.3 Flood Prone Land

This direction requires development in flood prone areas to be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual. It states that a planning proposal must not permit a significant increase in the development of flood prone land.

This proposal does apply to land identified as flood prone. Council has identified that the proposal will not increase flood risk and does not intensify potential uses in flood areas. Council considers that the proposal is consistent with the NSW Flood Prone Land Policy and relevant principles.

The proposal is considered to be consistent with this direction and no further approval is required.

The proposal is considered to be consistent with the other applicable s117 Directions:

2.1 Environmental Protection Zones

2.2 Coastal Protection

2.4 Recreation Vehicle Areas

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

3.4 Integrated Land Use and Transport

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

RECOMMENDATION

It is recommended that the Secretary's delegate be satisfied that the proposal is consistent with relevant s117 Directions or that any potential inconsistencies are of minor significance.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Three Ports) 2013

The Three Ports SEPP applies to Port Botany, Port Kembla, and the Port of Newcastle. It provides a consistent planning regime across the ports to allow the efficient operation of the ports and protection of land for port purposes.

The BlueScope lands - colloquially known as the Steelworks - falls within the SEPP area at Port Kembla and the SEPP is the relevant environmental planning instrument for consideration of development/uses in this area.

This proposal seeks to amend the SEPP in a number of ways to permit additional (in most cases temporary) uses on land that is surplus to the needs of BlueScope.

It also introduces a heritage map to better identify items of heritage significance (currently only listed) and removes one heritage item from the SEPP.

The above amendments are considered to be consistent with the overall objectives of the SEPP and/or will have no negative impact on the operation of the Port.

However, the proposal also seeks to introduce various uses as Exempt and Complying development. Currently, the SEPP restricts the operation of Exempt and Complying development to the Lease Area - being the port operations. Types of Exempt and Complying development allowed in the Lease Area include new port facilities; bulk liquid, LPG and fuel storage tanks.

This aspect of the proposal is inconsistent with:

- * aim (a) of the SEPP which aims to: provide a consistent planning regime for the development and delivery of infrastructure on land in the three ports; and

- * aim (c) of the SEPP which aims to: identify certain development within the Lease Area as exempt development or complying development.

Council has argued that it is unreasonable to differentiate between the Lease Area and other land. However, this was a deliberate decision taken when the SEPP was made. Given that the intention of the SEPP is to protect port related uses it is not necessarily

unreasonable for the SEPP to apply specific controls for land adjacent to the Lease Area to ensure the ongoing operation of the Port. The application of the Exempt and Complying provisions to the Lease Area only is similar to the provisions that applied prior to leasing of the Port where Part 5 of the Act could be used to assess development.

Council has stated that the amendments sought are minor and of a temporary nature and therefore will not prejudice the main aims of the SEPP. While this is generally the case, the proposed changes to Exempt and Complying provisions are not considered to be minor and need to be thoroughly assessed, and consideration given to whether it is reasonable to take this approach elsewhere.

Expansion of Exempt and Complying provisions under the SEPP for lands outside of the Lease Area could be considered through a separate process.

RECOMMENDATION

It is recommended that the proposal be amended to remove the aspect related to Exempt and Complying development prior to exhibition in order to remain consistent with the SEPP.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

Council has clearly identified the affected sites on aerial photos.

The proposal will permit additional permitted uses on certain sites. An Additional Permitted Use map will need to be prepared to identify the relevant sites.

The proposal aims to introduce a heritage map to the SEPP. This map will need to be prepared and exhibited if the proposal is supported at Gateway.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has proposed a 14 day exhibition period. This is considered appropriate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

It is recommended that the proposal be amended prior to exhibition to more clearly express the multiple intended outcomes of the proposal; and to remove the component that introduces Exempt and Complying development to the non-Lease Area. The explanation of provisions will need to be amended to explain how the SEPP will be amended to allow additional permitted uses on identified sites.

Council will also need to prepare a heritage map and an additional permitted uses map.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation
to Principal LEP :

Wollongong LEP 2009 is in place and the land subject to the Planning Proposal is included in the LEP. However, the Three Ports SEPP overrides the LEP.

Assessment Criteria

Need for planning
proposal :

BlueScope Steel has identified various vacant administration buildings and vacant hardstand areas that are surplus to its operational needs. These buildings/areas currently require expenditure for maintenance while providing no income and serving no useful purpose.

BlueScope is seeking greater flexibility to enable these areas/buildings to be available for additional uses currently not allowed under the Three Ports SEPP such as storage, office use, light industrial and warehousing. This would provide a source of income for maintenance of these buildings. The proposal identifies that these uses should sunset after 10 years or when/if the site is sold.

All sites are separated from steelmaking activities and have separate access. BlueScope has advised that use of these areas will not compromise steelmaking activities.

Healthy Cities Illawarra has approached Council (with the support of BlueScope) seeking to permit use of vacant land as a Community Facility (Men's Shed).

The Islamic Society of Illawarra is also seeking permission to use vacant land (presents as a residential block at the end of a residential cul-de-sac) for car parking. BlueScope supports this use.

These outcomes - along with the introduction of heritage mapping - require an amendment to the SEPP.

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Consistency with strategic planning framework :

The Illawarra Shoalhaven Regional Plan identifies both the significance of the Port of Port Kembla as an international trade gateway; and the contribution that current industrial/manufacturing operations - such as BlueScope - make to the Illawarra economy.

Specifically, the Plan includes two relevant actions:

1.2.1: Reduce land use conflicts by managing buffers around the port and its supporting freight networks; and

1.4.1: Investigate opportunities to better utilise industrial landholdings at Port Kembla.

The first action, while relevant, more particularly relates to the need to protect the Port and transport corridors from encroaching residential and other sensitive land uses.

In implementing the second action, the Department of Planning and Environment has met with stakeholders - including Wollongong Council, BlueScope, Department of Premier and Cabinet and Department of Industry - and will work with the group to undertake a strategic review of industrial holdings - starting with the BlueScope lands.

In addition, BlueScope has advised that it is preparing a long term Master Plan to guide the future of its holdings at Port Kembla.

This proposal is an initial component of these longer term projects and will not compromise the outcomes of these projects.

The proposal currently requires temporary uses to cease after 10 years or if the land is sold. This proposal is intended to be a short term measure to make more efficient use of existing unused buildings/areas and provide BlueScope with a source of income. It is considered that 5 years may be a more appropriate time period. This will allow time to finalise the strategic review and master-planning to guide the longer term future and use of these industrial areas.

As noted previously, the Three Ports SEPP sets the strategic and legal planning framework for the use of this area. While the proposal seeks to make amendments to the SEPP, these changes (apart from the expansion of Exempt and Complying development provisions) are considered minor and generally in keeping with the intent of the SEPP.

Environmental social economic impacts :

The proposal will not have a negative environmental impact. It provides some flexibility in the use of land currently zoned for industrial development. Economically, the proposal will provide a source of income for BlueScope - which is recognised as a significant local employer. It also provides opportunities for employment for other businesses wanting to use the vacant BlueScope land holdings. Due to the nature of the office accommodation and the location of the site, it is unlikely that it will compete with office accommodation available in centres. There will be social benefits from the Men's Shed use.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	DG
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage Department of Trade and Investment Transport for NSW Port Kembla Port Corporation Transport for NSW - Roads and Maritime Services Sydney Water		

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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Council has advised that it would be willing to accept delegations for the proposal. As it is proposed to amend a SEPP it is considered that the proposal should not be delegated to Council.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

No further studies are required.

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
Planning Proposal - State Environment Planning Policy (Three Ports) Amendment - Council report.pdf	Proposal	Yes
Planning Proposal - State Environment Planning Policy (Three Ports) Amendment - Council resolution.pdf	Proposal	Yes
Planning Proposal - State Environment Planning Policy (Three Ports) Amendment - covering letter.pdf	Proposal Covering Letter	Yes
Three Ports SEPP - planning proposal - version 27 July 2016.pdf	Proposal	Yes

Planning Team Recommendation

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

- S.117 directions:
- 1.1 Business and Industrial Zones**
 - 2.2 Coastal Protection**
 - 2.3 Heritage Conservation**
 - 3.4 Integrating Land Use and Transport**
 - 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**
 - 6.3 Site Specific Provisions**

Additional Information : **It is RECOMMENDED that the Executive Director, Planning Services, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the State Environmental Planning Policy (Three Ports) 2013 to:**

- permit a men's shed on land off Visitor Rd, Port Kembla;
- permit a car park for a place of worship on 1-3 Newcastle Road, Cringila;
- introduce a heritage map showing the location of heritage listed items;
- remove heritage listing for 'garden around former house and adjacent driveway' at 2 Electrolytic Street Port Kembla;
- permit the use of surplus administration buildings (as identified on the Additional

Permitted Uses map) for temporary office use, provided the additional uses cease within 5 years; and

- permit the use of surplus industrial buildings, warehouses and hard stand areas (as identified on the Additional Permitted Uses map) for temporary light industrial, storage and distribution and warehousing uses (but not retail uses), provided the additional uses ceases within 5 years; should proceed subject to the following conditions:

1. Part 1 Objectives or Intended Outcomes of the Planning Proposal should be amended prior to exhibition to:

- remove the wording that says the SEPP is being amended consistent with the SEPP
- refer to all of the intended outcomes of the proposal (apart from the expansion of Exempt and Complying development provisions);

2. Part 2 Explanation of provisions of the planning proposal should be amended prior to exhibition to:

- remove reference to permitting a range of Exempt and Complying development on the non-leased land;
- change the reference to a 10 year sunset to a 5 year sunset; and
- include wording to identify that surplus sites (which will be granted additional permitted uses) will be mapped

Note: all other references to Exempt and Complying development provisions should also be removed from the planning proposal.

3. Mapping to identify heritage items and the 'Additional Permitted Uses' sites should be prepared and included with exhibition material.

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

(a) the planning proposal is to be made publicly available for 28 days

(b) Council is to consult with NSW Ports on the proposal; and

(c) the relevant planning 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 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2013).

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

*Office of Environment and Heritage

*Transport for NSW - RMS; Freight Strategy & Planning

*Department of Trade and Investment

*Environment Protection Authority

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 it 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.

6. No public hearing is required to be held into the matter 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 a submission or if reclassifying land).

7. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

SECTION 117 DIRECTIONS

8. The Secretary's delegate can be satisfied that the proposal is consistent with relevant s117 Directions or that any inconsistencies are minor or justified.

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Supporting Reasons :

This proposal will allow the use of lands/existing buildings that are surplus to the operations needs of BlueScope - consistent with the Illawarra Shoalhaven Regional Strategy - without compromising the operation of port operations.

Signature:



Printed Name:

LINDA DAVLS

Date:

12/8/16