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Our ref: PP_2013_PORTS_003_00 (13/09477)
Your ref: PSC2013-01904

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

Attn: Peter Marler

Dear Mr Gesling,

Planning proposal to amend Port Stephens Local Environmental Plan (LEP) 2000 or draft Port Stephens LEP 2013

I am writing in response to your Council's letter dated 30 May 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to reclassify Lot 10 DP 729986 at 2 Jessie Road, Anna Bay from 'community' to 'operational' land.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistency with S117 Direction 2.1 Environment Protection Zones is of minor significance. No further approval is required in relation to this Direction. In relation to S117 Direction 6.2 Reserving Land for Public Purposes, Council is reminded that the Director General's agreement to the reduction of land for public purposes is still required and is to occur prior to the plan being made.

Council is reminded of its obligations for undertaking a public hearing in relation to the proposed reclassification of land in accordance with the department's practice note PN09-003, *Classification and reclassification of public land through a local environmental plan*. Council is to place practice note PN09-003 on public exhibition with the planning proposal.

Council is to ensure that the Nelson Bay Pony Club and adjoining landowners, including Energy Australia are consulted with directly on the proposed reclassification and the timeframes and public exhibition details of the proposal.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan because the Governor's approval is required in relation to reclassification of land. Reclassification proposals where the Governor's approval is required cannot be delegated back to Council.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the department to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Mr Dylan Meade of the regional office of the department on 02 4904 2700.

Yours sincerely,



Neil McGaffin
Executive Director

Rural and Regional Planning

Planning Operations and Regional Delivery

9.7.13

Gateway Determination

Planning proposal (Department Ref: PP_2013_PORTS_003_00): to reclassify land at Anna Bay from 'community' to 'operational' land.

I, the Executive Director, Rural and Regional Planning at the Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2000 or draft Port Stephens LEP 2013 to reclassify Lot 10 DP 729986 at 2 Jessie Road, Anna Bay from 'community' to 'operational' land should proceed subject to the following conditions:

1. Council is to ensure the planning proposal addresses the Director-General's requirements relating to the reclassification of public land consistent with section 5.5.4 of *A Guide to Preparing LEPs*.
2. Prior to undertaking public exhibition, Council is to update the planning proposal to clarify that the reclassification of land at Anna Bay from 'community' to 'operational' land may remove public access to the land and remove opportunities for the recreational use of the land. Council is to place on public exhibition with the planning proposal, the Open Space Consolidation Review (2007) and practice note PN09-003, *Classification and reclassification of public land through a local environmental plan*.
3. 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 must be made publicly available for a minimum of **28 days**; and
 - (b) 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 LEPs* (Department of Planning & Infrastructure 2013).
4. Consultation is required with the NSW Rural Fire Service (RFS) as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection. No other consultation is required under section 56(2)(d) of the EP&A Act. RFS is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. If necessary, the planning proposal is to be updated to take into consideration any comments made by RFS, prior to undertaking public exhibition.
5. A public hearing is not required to be held into the matter under section 56(2)(e) of the EP&A Act. However, a public hearing is required to be held into the matter in accordance with the department's practice note PN09-003, as the planning proposal involves a reclassification of land from community to operational.



6. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated 9th day of July 2013.

Neil McGaffin
Executive Director
Rural and Regional Planning
Planning Operations and Regional Delivery
Department of Planning and Infrastructure

Delegate of the Minister for Planning and Infrastructure