

SECTION 59 PLANNING REPORT

Port Stephens Local Environmental Plan 2013 (Amendment No. 12)

Planning proposal details:

PP_2013_PORTS_007_00(14/02614)

Planning proposal summary:

The planning proposal seeks to amend Schedule 1 – Additional permitted Uses of the *Port Stephens Local Environmental Plan 2013* by adding:

7 Use of certain land at Newline Road, Eagleton

- (1) This clause applies to land at Newline Road, Eagleton, being Lot 11 DP881743
- (2) Development for the purpose of a detached dual occupancy is permitted with consent.

Date of Gateway Determination:

15 September 2015

1.0 SUMMARY

Background

The planning proposal is the result of a development application that sought a change of use of an existing tourist facility and managers residence to a dual occupancy on the subject land. Under the *Port Stephens Local Environmental Plan 2013*, the proposed change of use is not permissible and the application was refused. As such, Council resolved to encourage the proponent to lodge a planning proposal to enable an additional permitted use on the site.

The tourist facility including a water-ski school and associated tourist lodge were approved on the site in 1998. However, the business became unviable in 2003 due to changes made by the Department of Land & Conservation, Waters Authority and Council regarding the use of waterways.

Following a number of development applications seeking a change of use of the buildings from tourist facility to dual occupancy being refused, on 11 August 2015 Council resolved to prepare a planning proposal to amend Schedule 1 Additional Permitted Uses of the *PSLEP 2013*, to include development for the purposes of a dual occupancy on the subject land.

Under the provisions of the *PSLEP 2013*, a dual occupancy is only permissible on land in the RU1 Zone where it has a minimum size of 20ha. The subject site is approximately 6 ha. In order for the proposed dual occupancy to be permitted, an amendment to Schedule 1 Additional Permitted Uses of the *PSLEP 2013* is required.

Key changes to Port Stephens Local Environmental Plan 2013

The planning proposal will be implemented by an amendment of the *Port Stephens Local Environmental Plan 2013* by adding the following to Schedule 1 – Additional Permitted Uses:

7 Use of certain land at Newline Road, Eagleton

- (3) This clause applies to land at Newline Road, Eagleton, being Lot 11 DP881743
- (4) Development for the purpose of a detached dual occupancy is permitted with consent.

Community consultation

The planning proposal was exhibited for 14 days, from 15th to 29th October 2015. No submissions were received.

There are no proposed changes to the draft plan as a result of public exhibition of the planning proposal.

2.0 GATEWAY DETERMINATION

- Date of Gateway Determination: 15 September 2015
- Timeframe for completion of planning proposal: 9 months
- the Gateway determination was not subject to a review request
- The conditions of the Gateway determination have been complied with.

3.0 COMMUNITY CONSULTATION

- The planning proposal was exhibited from 15th to 29th October 2015
- No submissions were received
- Consultation was undertaken in accordance with the Gateway determination
- No amendments were made to the planning proposal as a result of issues raised during community consultation

4.0 VIEWS OF PUBLIC AUTHORITIES

In accordance with the Gateway Determination, Council was not required to undertake consultation with any government agencies.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Section 117 Directions

The planning proposal is consistent with relevant s117 directions. The table below provides a detailed assessment of the planning proposal against relevant s117 directions.

Ministerial Direction	Aim of Direction	Consistency and Implications
1. EMPLOYMENT AND RESOURCES		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	The planning proposal is inconsistent with this Direction as it seeks to increase the permissible density in a rural zone. This inconsistency is considered to be of minor significance as it will provide a mechanism for the viable use of existing buildings on the site.
1.4 Rural Lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	The planning proposal seeks to amend provisions applying to rural zoned land. However, the planning proposal will not impact on the economic viability of rural land.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	The planning proposal will have minimal environmental impact.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low impact small businesses in dwelling houses.	Pursuant to the PSLEP 2013, Home occupation is permitted without consent in the RU1 Zone.

4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils	The subject site is identified as containing Acid Sulfate Soils. However, the planning proposal seeks to allow a change of use of existing buildings. As such, no works are proposed and ASS will not be impacted.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year floodplain.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	The proposal is satisfies the requirements of Planning for <i>Bushfire protection Guidelines 2006</i> .
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	The planning proposal is inconsistent with the LHRS as it seeks to increase dwelling density on rural land. The planning proposal is of minor significance and satisfies the 'sustainability

		criteria' contained in the LHRs. An assessment of the sustainability criteria is contained in the Planning Proposal.
6. LOCAL PLAN MAKING		
7.		
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The planning proposal is inconsistent with this Direction as it proposes site specific provisions. The proposal is of minor significance as the proposed site specific provisions will limit the land use changes to this specific site and not alter the rural zone.

State Environmental Planning Policies

There are no existing or draft SEPPs that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant SEPPs against the planning proposal is provided in the table below.

SEPP	Relevance	Consistency and Implications
SEPP 44 – Koala Habitat Protection	The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Part of the subject land contains Preferred Koala Habitat/cleared buffer area, however it is mostly cleared land and contains little vegetation. The location of the existing buildings is cleared land and the proposal does not include tree removal. The planning proposal will not impact upon koala habitat.
SEPP (Rural Lands) 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	The proposal complies with the objectives of the SEPP as it provides for the most economically viable use of the land. The proposal will not impact on the surrounding rural land use.

Lower Hunter Regional Strategy

The approved use of the site for a tourist facility is no longer viable. The planning proposal will allow the existing buildings on the site to be used as a detached dual occupancy. No additional development will be permitted as part of this proposal and it will create a viable use for the land.

The planning proposal is inconsistent with the objectives of the LHRS, which seeks to limit new dwelling entitlements in Rural Zones. However, it is consistent with the applicable Sustainability Criteria. An assessment of the planning proposal against the Sustainability Criteria is contained in

Integrated Planning and Reporting Framework

The Planning Proposal is a statutory planning document, which either directly or indirectly addresses a broad range of measures contained within Council's integrated plans, such as Direction 11.1.1.2 – Prepare and review statutory plans.

Port Stephens Planning Strategy (PSPS)

The PSPS aims to ensure that current and future agriculture is not compromised by the fragmentation of rural land. It further aims to ensure that prime agricultural land and important rural landscapes are protected from undesirable development.

The planning proposal is consistent with the aims of the PSPS as it will not compromise agricultural land or provide provisions that will allow for its further fragmentation. Given that no further development potential will be created as it is proposed to change the use of the existing buildings, the proposal will have no impact on the rural vista in the area.

6.0 PARLIAMENTARY COUNSEL OPINION

A request to prepare the legal drafting of the draft Plan was made to Parliamentary Counsel on DATE.

Parliamentary Counsel's opinion was received on DATE. It is the opinion of Parliamentary Counsel that the draft environmental planning instrument may be legally made.

A copy of the opinion and signed legal instrument is attached.

7.0 OTHER RELEVANT MATTERS

Council has not met with the Minister or any members for Parliament in relation to this plan.

8.0 MAPPING

There are no proposed changes to the Port Stephens Local Environmental Plan 2013 mapping.

9.0 RECOMMENDATION

It is recommended that the plan be made, without any amendments.