



# Planning Proposal – 713 Newline Road, Eagleton

**Proposed amendment to Schedule 1 of Port  
Stephens Local Environmental Plan 2013**  
Lot 11 DP881743, 713 Newline Road, Eagleton



**PORT STEPHENS**  
COUNCIL

## FILE NUMBERS

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**Council:** PSC2015-01071  
**Department:** PP\_2015\_PORTS\_007\_00 (14/02614)

## SUMMARY

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**Subject land:** Lot 11 DP881743, 713 Newline Road, Eagleton  
**Proponent:** LeMottee Group  
**Proposed Changes:** Amendment to Schedule 1 of the *Port Stephens Local Environmental Plan 2013* to allow dual occupancy development on the subject land  
**Zone:** RU1 Rural Production  
**Area of land:** Six (6) hectares

## BACKGROUND

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The land holder is seeking to change the approved use of a tourist facility and manager's residence to a detached dual occupancy on the subject land. However, under the *Port Stephens Local Environmental Plan 2013 (PSLEP 2013)*, a dual occupancy is not permitted on the subject land as a minimum lot size of 20 hectares is required on land in the RU1 Primary Production Zone. The subject site is 6 hectares.

Previously, the proposed dual occupancy was also not permitted under Clause 14 of the *Port Stephens LEP 2000*, which prohibited dwelling houses and dual occupancy on lots, such as this one, that were created for another intended use. Furthermore, as discussed below, there is a convenient on the title of the property restricting its use for dual occupancy. The convenient was created at the time of the development application to restrict the use of the land.

In order to allow the proposed change of use, an amendment to Schedule 1 Additional Permitted Uses of the *Port Stephens Local Environmental Plan 2013*, to include development for the purposes of a dual occupancy on the subject land, is required.

In November 1998, approval was granted on the subject land for a tourist facility, manager's residence and subsequent subdivision, pursuant to Clause 12(b) of the *Port Stephens LEP 1987*, which, at the time, allowed for the subdivision of rural land for an approved use other than dwellings. As such,

the subdivision did not result in an additional dwelling entitlement. The development consent required the land to be burdened by an 88B instrument restriction under the *Conveyancing Act 1919*, prohibiting a dwelling or duplex (Condition 6 of L1055/98).

The tourist facility included a water-ski school and associated tourist lodge. 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.

A Mayoral Minute dated 28 July 2009 (**Attachment 1**) resolved to initiate an amendment to Clause 14 of the *Port Stephens LEP 2000* to enable the permissibility of dwellings on allotments created for approved uses prior to the appointed date (being 29 December 2000). Clause 14 dealt with dwelling houses and dual occupancies in Rural Zones. This amendment sought to allow the proposed change of use however it did not proceed. The matter was considered through the preparation of the principal LEP (*PSLEP2013*), but was not included because the LEP sought to transition the existing provisions into the standard instrument template, without any significant policy change. As such, a standard minimum lot size for rural land use was applied.

Since this time, the land holder has lodged numerous development applications seeking a change of use from tourist facility and manager's residence to dual occupancy. These applications have been refused as dual occupancy is prohibited under previous and current LEPs.

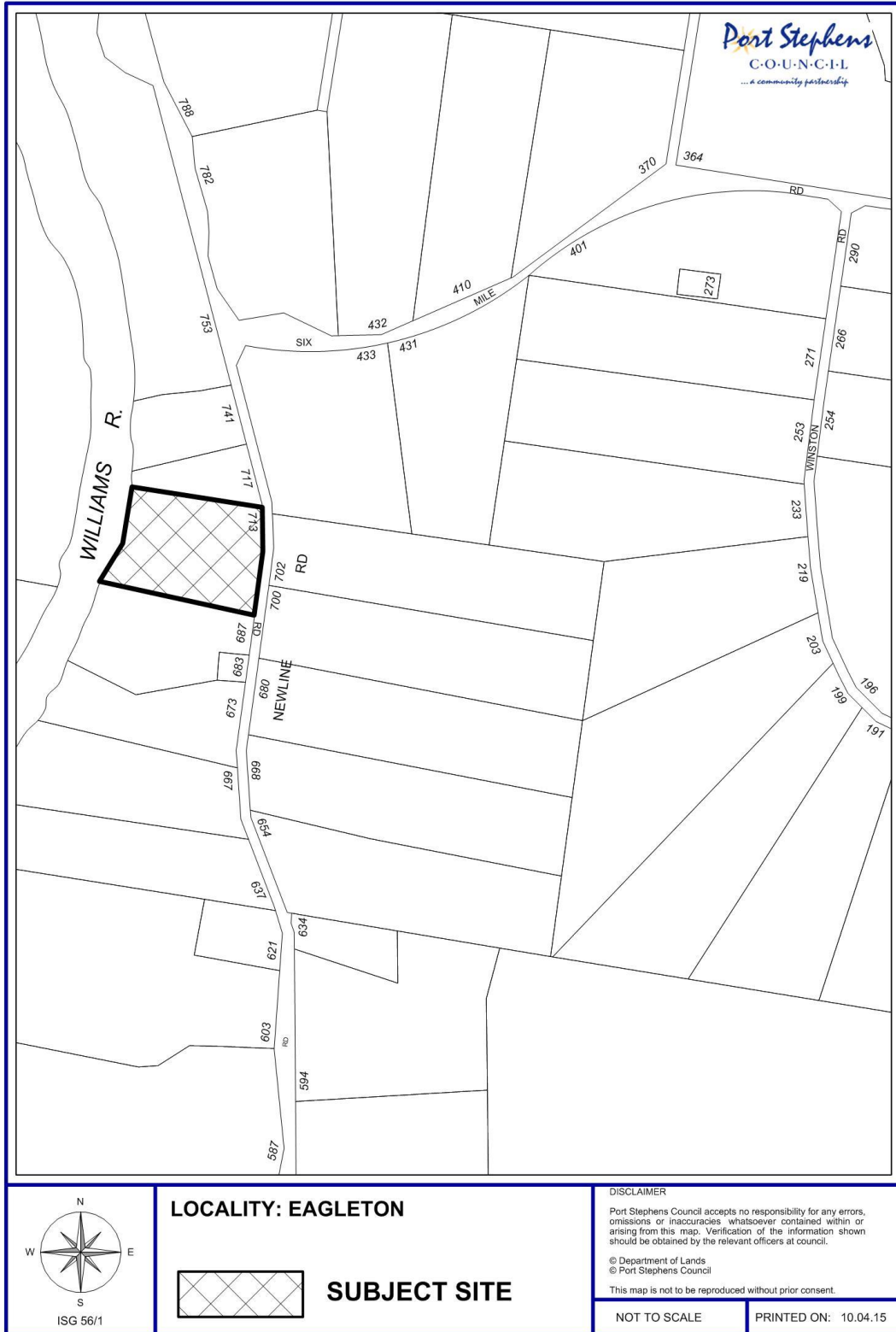
At its meeting on 10 March 2015, Council refused a development application for a change of use from tourist facility to dual occupancy due to the proposed development being prohibited under the *PSLEP 2013* (report located in **Attachment 2**). However, at this time, Council indicated support for the applicant to lodge a planning proposal seeking an amendment to Schedule 1 to allow the use of the existing buildings for dual occupancy. Council also resolved to waive any fees associated with the planning proposal.

On 11 August 2015, Council resolved to prepare the subject planning proposal pursuant to Section 55 of the *Environmental Planning and Assessment Act 1979 (NSW)* and forward it to the Department of Planning and Environment for a gateway determination (**Attachment 3**).

Following the plan being made, a new Development Application seeking a change of use to a dual occupancy will need to be lodged. Further, as there is an operational consent over the land which prohibits dual-occupancy/dwellings on the subject lot (condition 6 of L1055/98), a Section 96 application must also be lodged (concurrently) seeking the removal of this condition. The 88B instrument restriction will also need to be removed from the title of the property.

# SITE

The planning proposal relates to Lot 11 DP881743, 713 Newline Road, Eagleton. **Figure 1 – 713 Newline Road** (Page 3) identifies the site.



**Figure 1 – Locality Plan – 713 Newline Road, Eagleton**

## **PART 1 – Objective of the proposed Local Environmental Plan Amendment**

The planning proposal aims to allow detached dual occupancy as an additional permitted use on Lot 11 DP881743, 713 Newline Road, Eagleton.

## **PART 2 – Explanation of the provisions to be included in proposed LEP**

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.

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:

### **X 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.

## **PART 3 – Justification for the Planning Proposal**

### **SECTION A – Need for the Planning Proposal**

#### *1. Is the planning proposal a result of any strategic study or report?*

No. 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 *PSLEP 2013*, the proposed change of use is not permissible and the application was refused. However, Council resolved to encourage the proponent to lodge a planning proposal to enable an additional permitted use of the site.

The dual occupancy is a prohibited use, and the subdivision and existing buildings were specifically approved for a tourist facility, with a covenant restricting their use as a dwelling / dual occupancy. Furthermore, additional development in rural areas increases the potential for land use conflict between the rural residential land and agricultural pursuits and increases demand for services in remote areas. For these reasons, it is considered that the proposal has limited strategic justification, despite the minimal environmental impacts of the change of use.

#### *2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Under the provisions of the LEP 2013, a dual occupancy is prohibited on the subject land. An amendment to Schedule 1 is required in order for the existing buildings on the land to be used as a dual occupancy. In this instance, an amendment to Schedule 1 is the best means of allowing a dual occupancy on the subject land, as it will not change the use of other rural land.

*3. Is there a community benefit?*

The proposal will have minimal social or economic benefit to the community.

## **SECTION B – Relationship to Strategic Planning Framework**

*4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

### Lower Hunter Regional Strategy (LHRS)

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 **Attachment 4**.

*5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?*

### 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.

### **State Environmental Planning Policies**

*6. Is the planning proposal consistent with applicable 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.

**Table 1: Relevant State Environmental Planning Policies**

| <b>SEPP</b>                               | <b>Relevance</b>   | <b>Consistency and Implications</b>  |
|---|--|--|
| <b>SEPP 44 – Koala Habitat Protection</b> | 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.<br><br>The planning proposal will not impact upon koala habitat. |
| <b>SEPP (Rural Lands) 2008</b>            | 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.   |

## Section 117 Ministerial Directions

### 7. Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of relevant s.117 Directions against the planning proposal is provided in the table below.

**Table 2: Relevant s.117 Ministerial Directions**

| <b>Ministerial Direction</b>                            | <b>Aim of Direction</b>  | <b>Consistency and Implications</b>   |
|---|--|---|
| <b>1. EMPLOYMENT AND RESOURCES</b>                      |  |   |
| <b>1.2 Rural Zones</b>                                  | 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.<br><br>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. |
| <b>1.4 Rural Lands</b>                                  | 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.   |
| <b>2. ENVIRONMENT AND HERITAGE</b>                      |  |   |
| <b>2.1 Environmental Protection Zones</b>               | The objective of this direction is to protect and conserve environmentally sensitive areas.  | The planning proposal will have minimal environmental impact.   |
| <b>3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT</b> |  |   |
| <b>3.3 Home Occupations</b>                             | 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.   |



| <b>4. HAZARD AND RISK</b>                        |   |  |
|--|---|--|
| <b>4.1 Acid Sulfate Soils</b>                    | 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. |
| <b>4.3 Flood Prone Land</b>                      | 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.  |
| <b>4.4 Planning for Bushfire Protection</b>      | 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> .  |
| <b>5. REGIONAL PLANNING</b>                      |   |  |
| <b>5.1 Implementation of Regional Strategies</b> | 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 located at <b>Attachment 4.</b>   |
| <b>6. LOCAL PLAN MAKING</b>         |   |  |
| <b>6.3 Site Specific Provisions</b> | 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.<br><br>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. |

### **SECTION C – Environmental, Social and Economic Impact**

*8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

No. The buildings already exist and therefore the proposal is unlikely to have any significant adverse impacts to the environment or surrounding rural amenity.

*9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

No.

*10. Has the planning proposal adequately addressed any social and economic effects?*

The proposal will have minimal social and economic impacts.

### **SECTION D – State and Commonwealth interests**

*11. Is there adequate public infrastructure for the planning proposal?*

The proposal will not generate a significant demand for additional public infrastructure.

12. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council is not required to undertake government agency consultation. Due to the local nature and minimal impact of the proposal, it is unlikely that any agencies will have an interest in the planning proposal.

### **Part 5 - Details of Community Consultation**

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The planning proposal was exhibited for a period of fourteen (14) days, in accordance with the gateway determination (**Attachment 5**), from 15<sup>th</sup> October to 29<sup>th</sup> October.

Notice of the public exhibition period was placed in The Examiner. The exhibition material was on display at the following locations during normal business hours:

- Council's Administration Building 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Council's website.

No submissions were received during the exhibition period.

### **Part 6 – Project timeline**

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The planning proposal is expected to be reported to Council following the completion of the public exhibition period.

The following timetable is proposed:

|                                     | <b>AUG15</b> | <b>SEPT<br/>15</b> | <b>OCT<br/>15</b> | <b>NOV<br/>15</b> | <b>DEC<br/>15</b> | <b>JAN<br/>16</b> | <b>FEB<br/>16</b> |
|-------------------------------------|--------------|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b><i>Council consideration</i></b> |              |                    |                   |                   |                   |                   |                   |
| <b><i>Gateway Determination</i></b> |              |                    |                   |                   |                   |                   |                   |
| <b><i>Public Exhibition</i></b>     |              |                    |                   |                   |                   |                   |                   |
| <b><i>Council Report</i></b>        |              |                    |                   |                   |                   |                   |                   |
| <b><i>Parliamentary Counsel</i></b> |              |                    |                   |                   |                   |                   |                   |

## MAYORAL MINUTE

ITEM NO. 1

FILE NO:16-2009-165-1

### AMENDMENT TO CLAUSE 14 OF THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

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#### THAT COUNCIL:

Resolve to initiate a draft amendment to Clause 14 of the Port Stephens Local Environmental Plan 2000 to enable permissibility of dwellings on allotments created for approved uses prior to the appointed date.

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#### BACKGROUND

##### **Clause 14 – Dwelling houses and dual occupancy housing in Rural zones.**

Clause 14 of the Port Stephens Local Environmental Plan, 2000 outlines the matters to be considered in the development of dwelling houses and dual occupancies within the Rural zones.

Clause 14 states inter alia;

*(2) The consent authority shall not consent to the erection of a dwelling house or dual occupancy housing on an allotment of land to which this clause applies if;*

*(i) if the allotment was created before the appointed day – the consent authority is of the opinion that the allotment was intended to be used for any one or more of the purposes (other than the purpose of dwelling house or dual occupancy housing) for which it could have been used (with or without the consent of the consent authority) under the environmental planning instrument under which it was created,*

Clauses 14(2)(i) and 14(2)(ii) serve specifically to prohibit the development of dwellings and/or dual occupancies on allotments that were created for another intended use (other than dwellings and/or dual occupancies).

#### **Development Proposal**

Council is in receipt of a Development Application (16-2009-165-1) proposing the change of use from Tourist Facility (Ski School) and Managers Residence to Dual Occupancy.

The Ski School was approved on 5<sup>th</sup> November 1998 by Development Consent L1055/98 which encompassed approvals for the use of the subject site for Managers Residence, Tourist Lodge, Subdivision and Water Ski School.

Consent condition Number 6 restricted the use of the site in the following way

*The use of the proposed allotments is restricted pursuant to clause 12(b) of Local environmental Plan 1987 and accordingly no dwelling or duplex can be built on the proposed residue Lot1. The title of the relevant property shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.*

This condition was reflected in the allotments 88B instrument, specifically in Terms of Easement or Restrictions secondly referred to in the plan.

The provisions of Condition 6 of Development Consent L1105/98, the Section 88B instrument for DP 881743 and Clause 12(b) of the LEP 1987 all serve to prohibit this development.

In June 2006, Council received correspondence requesting that the 88B be released by Council to allow a Dual Occupancy on the site. Council's Senior Development Planner responded on 28<sup>th</sup> August 2006 stating that this restriction on the title of the land could not be varied given that the original approval was granted pursuant to the provisions of Clause 12(b) of the Local Environmental Plan 1987.

Under the provisions of Council's current Planning Instrument, the Port Stephens Local Environmental Plan 2000, Clause 14 deals with dwelling houses and dual occupancies in the rural zone.

Given that the proposal for subdivision and Tourist Facility was approved under Clause 12(b) of the Port Stephens Local Environmental Plan 1987 development for the purposes of Dwelling House or Dual Occupancy Housing is prohibited by clause 14 of LEP 2000.

Hence to enable this request by the land owner to be considered for approval, a relevant amendment is required to the Port Stephens Local Environmental Plan 2000.

## Attachment 2 – Council Report and Minutes 10 March 2015

### MINUTES ORDINARY COUNCIL – 10 MARCH 2015

ITEM NO. 1

FILE NO: 16-2014-222-1

**DEVELOPMENT APPLICATION FOR A CHANGE OF USE FROM TOURIST LODGE AND MANAGERS RESIDENCE TO DETACHED DUAL OCCUPANCY DEVELOPMENT AT NO 713 NEWLINE ROAD, EAGLETON (LOT 11 DP881743)**

REPORT OF: **MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE  
SECTION MANAGER**

GROUP: **DEVELOPMENT SERVICES**

#### RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2014-222-1 for change of use from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons:
  - a. The proposed development is prohibited under Clause 4.28 of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979);
  - b. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979);
- 2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).

#### ORDINARY COUNCIL MEETING – 10 MARCH 2015

##### MOTION

|     |  |
|-----|--|
| 040 | <b>Councillor Steve Tucker</b><br><b>Councillor John Nell</b>  |
|     | It was resolved that Council move into Committee of the Whole. |

Cr Paul Le Mottee left at 5.31pm, prior to Item 1, in Committee of the Whole.

##### COMMITTEE OF THE WHOLE RECOMMENDATION

|  |   |
|--|---|
|  | <b>Mayor Bruce MacKenzie</b><br><b>Councillor Sally Dover</b>   |
|  | That Council: <ol style="list-style-type: none"><li>1) Refuse Development Application 16-2014-222-1 for change of use</li></ol> |

|  |  |
|--|--|
|  | <p>from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons:</p> <ul style="list-style-type: none"> <li>c. The proposed development is prohibited under Clause 4.28 of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning &amp; Assessment Act 1979);</li> <li>d. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning &amp; Assessment Act 1979;</li> </ul> <p>2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).</p> <p>3) Given Council has previously indicated support for this rezoning application via minute no 221 of 28 July 2009, and it was Council's understanding the proposal would be included in the comprehensive Local Environmental Plan (LEP), Council resolve that no fees are applicable for the planning proposal.</p> |
|--|--|

In accordance with Section 375A of the *Local Government Act 1993*, a division is required for this item.

Those for the motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Chris Doohan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the motion: Nil.

**MOTION**

Cr Paul Le Mottee left the meeting at 6.04pm, prior to Item 1, in Open Council.

|            |  |
|------------|--|
| <b>042</b> | <p><b>Councillor Chris Doohan</b><br/><b>Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ul style="list-style-type: none"> <li>1) Refuse Development Application 16-2014-222-1 for change of use from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons: <ul style="list-style-type: none"> <li>e. The proposed development is prohibited under Clause 4.28</li> </ul> </li> </ul> |
|------------|--|

|  |   |
|--|---|
|  | <p>of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning &amp; Assessment Act 1979);</p> <p>f. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning &amp; Assessment Act 1979;</p> <p>2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).</p> <p>3) Given Council has previously indicated support for this rezoning application via minute no 221 of 28 July 2009, and it was Council's understanding the proposal would be included in the comprehensive Local Environmental Plan (LEP), Council resolve that no fees are applicable for the planning proposal.</p> |
|--|---|

In accordance with Section 375A of the *Local Government Act 1993*, a division is required for this item.

Those for the motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Chris Doohan, Steve Tucker, Geoff Dingle, John Nell, John Morello and Sally Dover.

Those against the motion: Nil.

**BACKGROUND**

The purpose of this report is to present to Council for determination development application 16-2014-222-1. The application has been called to Council by Councillor Jordan due to community interest. A copy of the call up form is included at **(ATTACHMENT 1)**.

Proposal

The application seeks to change the approved use of a tourist facility and managers residence to a detached dual occupancy under the Port Stephens Local Environmental Plan 2013 located at 713 Newline Road, Eagleton **(ATTACHMENT 2)**.

The key issue with the application relates to permissibility under the Port Stephens Local Environmental Plan 2013. Other impacts of the development are suitable and compliant with the relevant Development Control Plan (DCP) requirements. This is outlined in the Assessment **(ATTACHMENT 3)**.



Since 2006, Council staff have advised the owner/applicant on a number of occasions that the change of use is prohibited. A report to Council in 2009 resulted in the issue of a refusal. Council has previously advised via Council resolution it would support a planning proposal to change the zoning provisions to accommodate such a use.

#### Site History

Approval for a tourist facility, managers residence and a subdivision was granted pursuant to Clause 12(b) of the Port Stephens Local Environmental Plan 1987 (DA 1055/98) on 5 November 1998. This clause allowed for subdivision of rural land for an approved use, excluding dwellings, therefore did not include a dwelling entitlement.

The tourist facility was sought to be run as a water-ski school and associated tourist lodge. The site is burdened with an 88B instrument restriction under the *Conveyancing Act 1919* prohibiting a dwelling or duplex.

In 2006 the owners sought Council's approval to remove the restriction on the use of the land contained in the 88B instrument. The basis of the request related to changes to the way in which the water-ski school was able to operate, which the owner advised would render the business unviable.

In 2003, the Department of Land & Conservation, Waters Authority and Port Stephens Council undertook a joint investigation into stream bank erosion and the adoption of a new Boating Traffic Management Plan for the Williams River. Following this, Boating Traffic Management Plans were adopted which prohibit slow speed towing, including wakeboarding or knee boarding in the stretch of the river some distance either side of the subject site's frontage to the river. The owner advised that this impacted negatively on the business as novice skiers or wake boarders could not be trained properly without being able to access other areas on the river and requested removal of the 88B restriction.

At the time of the request, Council advised that the restriction could not be removed given a dwelling or duplex was prohibited under the Port Stephens Local Environmental Plan 2000 (as a result of the previous subdivision not being for this purpose).

In 2009, the owners lodged another development application for a change of use from tourist facility to dual occupancy and sought amendment to Clause 14 of Council's Local Environmental Plan 2000 to allow the development. The development application was also refused by Council as consent for the subdivision had been granted pursuant to Clause 12(b) of Port Stephens Local Environmental Plan 1987 on the basis that the new lot would only be for the tourist facility and development for a dual occupancy was prohibited.

Although the site is considered suitable for the proposed development from a merits perspective, the application cannot be supported given the proposal is not permissible under the Port Stephens LEP 2013. The purpose of this LEP provision is to minimise the fragmentation of agricultural land.

Council officers have sought to assist the owner/applicant by seeking them to lodge a planning proposal requesting an amendment to the Port Stephens LEP 2013 to enable an additional permitted use on the site (for the purposes of a dual occupancy). If a planning proposal was lodged, Council officers have advised they would support making a submission to the NSW Planning & Environment for their consideration. |

**FINANCIAL/RESOURCE IMPLICATIONS**

The application could be potentially challenged in the Land and Environment Court. Defending Council's determination could have financial implications. |

| Source of Funds | Yes/No | Funding (\$) | Comment |
|-----------------|--------|--------------|---------|
| Existing budget | No     |              |         |
| Reserve Funds   | No     |              |         |
| Section 94      | No     |              |         |
| External Grants | No     |              |         |
| Other           | No     |              |         |

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is prohibited under Council's Local Environmental Plan 2013 and is therefore not consistent with the requirements of Section 79C(a) of the *Environmental Planning & Assessment Act 1979*. |

| Risk  | <a href="#">Risk Ranking</a> | Proposed Treatments   | Within Existing Resources? |
|---|------------------------------|---|----------------------------|
| The application is refused the determination may be challenged in the Land and Environment Court. | Low                          | Council is confident the assessment is robust and if required is able to proceed through the legal process. | Yes                        |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Part of Council's role is to provide services and make decisions that enhance quality of life. The proposal seeks to return a viable use to the land and there are no social and economic implications for Council by allowing for provision of housing within buildings that currently exist on the land.

The Applicant advises that the current existing use was rendered inoperable as a result of concerns over boating and stream bank erosion of the Williams River.

Both the manager's residence and tourist lodge (originally a dwelling) exist on the site. The site is well maintained and the proposal does not have any adverse environmental impacts nor will the development have any adverse social or economic implications. |

### **CONSULTATION**

|The application did not require public notification in accordance with Council's policies. The application was referred to Council's building surveyors in accordance with Council's service level agreements. Consultation with the applicant and site inspection with the owners has taken place. |

### **OPTIONS**

- |1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations. |

### **ATTACHMENTS**

- |1) Councillor Call to Council Form;
- 2) Locality Plan;
- 3) Assessment;
- 4) Conditions/Reasons for refusal. |

### **COUNCILLORS ROOM**

- |1) Statement of Environmental Effects;
- 2) Site Photos. |

### **TABLED DOCUMENTS**

|Nil.

ATTACHMENT 1  
COUNCILLOR CALL UP FORM

116 Adelaide Street, Raymond Terrace NSW 2324  
 PO Box 42, Raymond Terrace NSW 2324  
 Fax 2788 1488  
 116 Adelaide Street, Raymond Terrace NSW 2324  
 PO Box 42, Raymond Terrace NSW 2324  
 Fax 2788 1488

**Port Stephens COUNCIL** | **CALL TO COUNCIL FORM DEVELOPMENT APPLICATION**

I, Councillor Ken Jordan .....  
 require Development Application Number..... 16-2014-222-1.....  
 for a : .....change of use – tourist lodge to dual occ .....

at 713 Newline Road, Eagleton.....

to be subject of a report to Council for determination by Council.

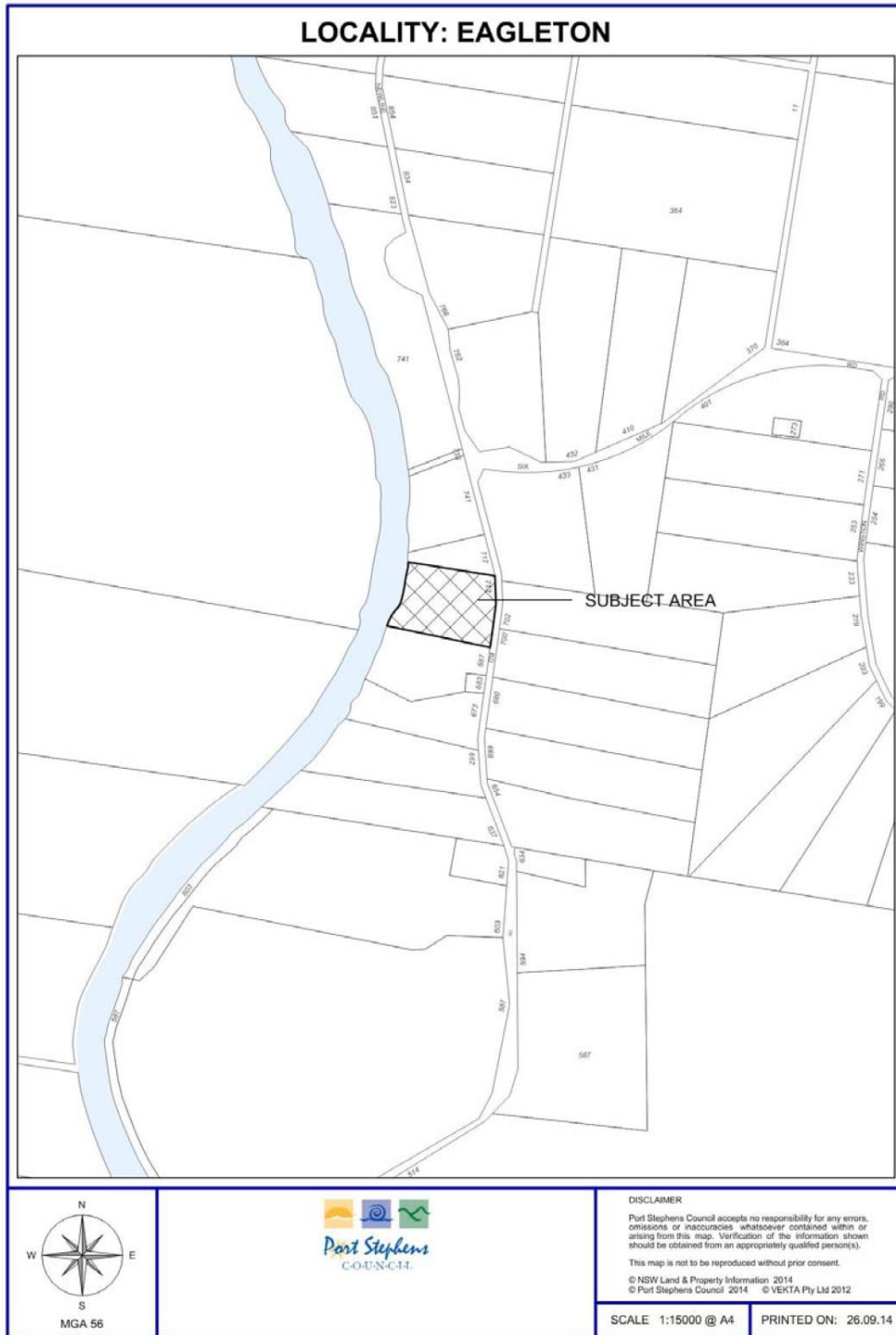
**Reason:**  
 The reason for this call-up to Council is *so the applicant can do public access and the Councillors can do site visit.*

**Declaration of Interest:**  
 I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person. **I have a conflict of interest? Yes/No** (delete the response not applicable).  
 If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed: .. Date: *20/1/2015*

0255 | Facsimile: 02 4987 3612  
 www.portstephens.nsw.gov.au | Web: www.portstephens.nsw.gov.au

ATTACHMENT 2  
LOCALITY PLAN



**ATTACHMENT 3  
ASSESSMENT**

The application has been assessed pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* and the following is a summary of those matters considered relevant in this instance.

**THE PROPOSAL**

The application is for a change of use from the approved tourist facility and managers residence to a detached dual occupancy under Port Stephens Local Environmental Plan 2013.

**THE APPLICATION**

|                    |  |
|--------------------|--|
| Owner<br>Applicant | Mr. G.A & Ms N M Wright<br>Le Mottee Group |
|--------------------|--|

**THE LAND**

|                      |  |
|----------------------|--|
| Property Description | Lot 11 DP881743  |
| Address              | 713 Newline Road, Eagleton   |
| Area                 | The site has an area of 5.258ha.   |
| Dimensions           | The site has irregular dimensions, however, is generally rectangular in shape and has frontage to the Williams River.  |
| Characteristics      | Bushfire prone land, Acid Sulphate Soils (ASS) Class 5, Koala Habitat (cleared buffer/preferred), Prime Agricultural land (classes 1-3), Partially flood affected. |



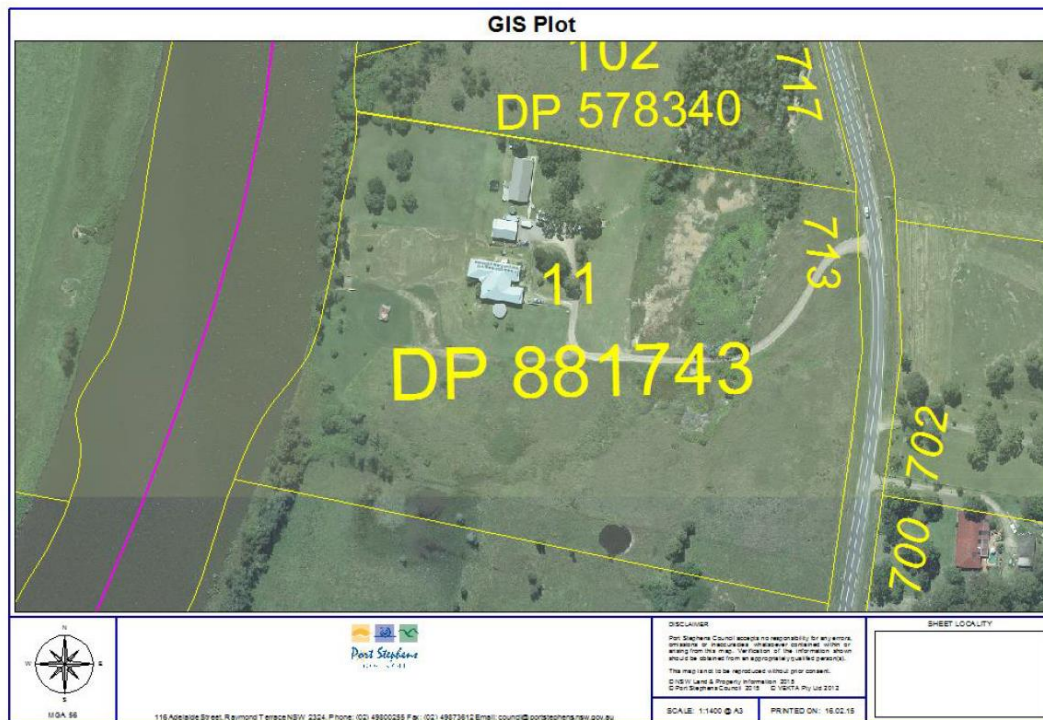


Figure 1 – Aerial Image of Development Site

**THE ASSESSMENT**

**PLANNING PROVISIONS**

|  |  |
|--|--|
| <p><i>Environmental Planning and Assessment Act 1979</i></p> | <p>s.79C Planning provisions<br/>Rural Fires Act 1997 (79BA)</p>   |
| <p>State Environmental Planning Policies</p>                 | <p>State Environmental Planning Policy Rural Lands (2008)<br/>State Environmental Planning Policy No.44 – Koala Habitat Protection (and Port Stephens Comprehensive Koala Plan of Management)</p>                              |
| <p>Port Stephens Local Environmental Plan (2013)</p>         | <p>Zone RU1 Primary Production<br/>Clause 4.2B Erection of dwelling houses on land in certain rural, residential and environmental protection zones<br/>Cl.7.1 Acid sulphate soils.<br/>Cl.7.10 – Williams River Catchment</p> |
| <p>Port Stephens Development Control Plan 2013</p>           | <p>B2 Environment and Construction Management</p>  |

B3 Parking and Traffic  
B6 Single and Dual Occupancy Dwellings

Port Stephens Section 94 Plan

Section 94 contributions are not applicable as section 94 levies raised under DA 1055/98.

### **Statutory Acts and Regulations**

#### ***Environmental Planning and Assessment (EP&A) Act 1979* Section 79C – Planning Assessment**

An assessment under Section 79C of the EP& A Act 1979 has been undertaken throughout this report.

#### ***Rural Fires Act 1997 (Section 79B)***

The proposed development is located on bushfire prone land (south east corner of the site only). The two existing building structures on site were in existence prior to the change of use to the mangers residence and tourist lodge in 1998. The change of use to a dual occupancy development is not a 'special fire protection purpose' under 100B of the *Rural Fires Act 1997* and the proposal is not integrated development under s.91 of the *EP&A Act 1979*. The site is clear of trees and is not within 100m of any significant vegetation. The site is also within 70m of the Williams River. The proposal therefore satisfies Planning for Bushfire Requirements 2006 and does not require referral to RFS, or any upgrades should Council elect to approve the dwelling.

### **State Environmental Planning Policies**

#### **State Environmental Planning Policy (Rural Lands) 2007**

The proposal complies with the aims of this State Policy which include the facilitation of the orderly and economic use and development of rural lands for rural and related purposes. The approved use on the site is no longer viable and return of the site to a dual occupancy use will ensure the ongoing viability of land use having regard to social, economic and environmental considerations.

#### **State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)**

State Environmental Planning Policy No.44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as containing Preferred Koala Habitat/cleared buffer area (western and south western part of the site only). The site is mostly cleared and



contains little vegetation. The proposal does not include tree removal and the change of use to dual occupancy development will not impact upon koala habitat.

### **Port Stephens Local Environmental Plan (2013)**

#### **Zone RU1 Primary Production**

The land is zoned RU1 Primary Production. The proposed development is not inconsistent with the objectives of the zone. Dwelling houses and Dual Occupancies are permissible forms of development under the provisions of the RU1 Zone, subject to compliance with the other provisions of the LEP.

#### **Clause 4.2B Erection of dwelling houses on land in certain rural, residential and environment protection zones**

Clause 4.2B(3) states that development consent must not be granted for the erection of a dwelling house on land to which this clause applies unless the land:

- (a) Is a lot that is at least the minimum lot size shown on the Lot Size Map under Port Stephens Local Environmental Plan 2013.

*The current lot size is 5.258ha and therefore does not meet the minimum lot size of 20ha required under this Clause.*

Alternatively, Clause 4.2B(3) states development consent can be granted for land in the RU1 Primary Production zone if it is a lot created before the Plan commenced that has an area of at least 4,000 square metres and on which the erection of a dwelling house was permissible immediately before that commencement.

*This Clause does not apply because the original approval under Clause 12(B) of Port Stephens Local Environmental Plan 1987 for a Tourist Facility, Manager's Residence and Subdivision resulted in extinguishing the dwelling entitlement relating to this land.*

The applicant provided an argument that the development should be permissible as the buildings were already in existence and clause 4.2B relates to the 'erection' of dwelling houses and dual occupancies. Council officers sought legal advice in this regard (from Local Government Legal) who confirmed that the term dwelling house encompasses both the development and use of the land (see case law *Dobrohotoff v Bennic [2013]*)

Furthermore, the *Interpretations Act 1987* provides that in interpreting a provision of an Act the interpretation that would best achieve the purpose of object (whether or not that purpose is expressly stated) is to be preferred.

In this regard, the principle objective of Clause 4.2(B)3 is to minimise unplanned rural residential development. The objective is achieved by restricting new dwelling entitlements on land to which the clause applies. The objective of Clause 4.2B would be undermined if the clause were interpreted to allow Council to grant consent to a

change of use of a building for the purpose of a dwelling/dual occupancy. In addition an interpretation of Clause 4.2B that would allow a change of use to a building so as to create a primary dwelling entitlement is contrary to the objectives of the RU1 Primary Production zone. Therefore, legal advice confirmed that Clause 4.2B should be interpreted as if it was drafted as follows:

*'development consent must not be granted for the erection of, or for the purpose of a dwelling house on land...'.*

### **Clause 7.1 Acid Sulphate soils**

The subject site is identified as containing Acid Sulphate soils (ASS). No works are being undertaken as part of the proposal which is likely to lower the water table below. The proposal is therefore not inconsistent with the provisions of clause 7.1.

### **Clause 7.3 – Flood Planning**

The site is partially flood prone, however, both of the buildings are located outside of the area on the site subject to flooding. In this regard, the proposed development is compatible with the flood hazard of the land and there will be no unsustainable impacts.

### **Clause 7.10 – Williams River Catchment**

The objectives of this clause include environmental protection of the Williams River Catchment. The proposal will promote the sustainable use of the land and will have less impact than the existing approved use of the site given skiing and wakeboarding activities will no longer be undertaken within the river.

### **Port Stephens Development Control Plan 2013**

#### **B2 Environmental and Construction Management**

The proposal does not result in adverse impacts to the environment. As detailed above, it is anticipated environmental impacts will decrease (bank erosion within the Williams River) as a result of a decrease in skiers and wakeboarders associated with the tourist facility.

#### **B3 Parking and Traffic**

The site provides for existing parking and access and is not considered to require further consideration under Port Stephens Development Control Plan 2013.

#### **B6 Single and Dual Occupancy Dwellings**

The two buildings currently exist on the site and comply with the relevant requirements for dwellings under the plan.

**Section 94 Contribution Plan**

Section 94 Levies were raised under DA 1055/98 at the time the land was subdivided and therefore are not applicable to the subject proposal.

**Community consultation**

Consultation with the applicant and site inspection with the owners has taken place.

**Internal referrals**

**Building**

The application was referred to Council's Building Surveying Team for review and it was identified that the proposal was satisfactory in regard to building matters.

**Likely impacts of the development**

The proposal does not present any significant adverse impacts to the environment or surrounding rural amenity.

**Suitability of the site**

There are no physical constraints on the site that make the land unsuitable for the proposed development. The site is well maintained, retains its rural character and amenity and is suitable for the proposed development.

**Public interest**

The development does not result in negative social, economic and environmental outcomes. Council has no significant issues with the proposed use of the site, however, the change of use is prohibited under Port Stephens Local Environmental Plan 2013.

**ATTACHMENT 4  
REASONS FOR REFUSAL**

- 1) The proposed development is prohibited under Clause 4.2B of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the *Environmental Planning & Assessment Act 1979*); and
- 2) The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the *Environmental Planning & Assessment Act 1979*)

**Attachment 3 – Council Report and Minutes 11 August 2015**

**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015**

ITEM NO. 2

FILE NO: PSC2015-01000/598  
TRIM REF NO: PSC2015-01071

**PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON**

REPORT OF: TIMOTHY CROSDALE - STRATEGY AND ENVIRONMENT  
SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Planning Proposal at (**ATTACHMENT 1**) to amend Schedule 1 Additional Permitted Uses of *Port Stephens Local Environmental Plan 2013* to include development for the purposes of a dual occupancy on the subject land.
- 2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the *Environmental Planning and Assessment Act 1979* with a request for a Gateway Determination.

Cr Paul Le Mottee left the meeting at 5:57pm during Committee of the Whole.

**ORDINARY COUNCIL MEETING - 11 AUGUST 2015**

**MOTION**

|            |  |
|------------|--|
| <b>233</b> | <b>Councillor Ken Jordan</b><br><b>Councillor John Morello</b><br><br>That Council move into Committee of the Whole. |
|------------|--|

**ORDINARY COUNCIL MEETING - 11 AUGUST 2015**

**COMMITTEE OF THE WHOLE RECOMMENDATION**

|  |  |
|--|--|
|  | <b>Councillor Ken Jordan</b><br><b>Councillor John Morello</b><br><br>That Council:<br><ol style="list-style-type: none"><li>1) Adopt the Planning Proposal at (<b>ATTACHMENT 1</b>) to amend Schedule 1 Additional Permitted Uses of <i>Port Stephens Local Environmental Plan 2013</i> to include development for the purposes of a dual occupancy on the subject land.</li><li>2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.</li></ol> |
|--|--|

## MINUTES ORDINARY COUNCIL - 11 AUGUST 2015

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Bruce MacKenzie, John Morello, John Nell and Steve Tucker

Those against the Motion: Nil

Cr Paul Le Mottee returned to the meeting at 5:58pm during Committee of the Whole.

Cr Paul Le Mottee left the meeting at 6:26pm during open Council.

### ORDINARY COUNCIL MEETING - 11 AUGUST 2015 MOTION

|            |  |
|------------|--|
| <b>234</b> | <p><b>Mayor Bruce MacKenzie<br/>Councillor Ken Jordan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Adopt the Planning Proposal at <b>(ATTACHMENT 1)</b> to amend Schedule 1 Additional Permitted Uses of <i>Port Stephens Local Environmental Plan 2013</i> to include development for the purposes of a dual occupancy on the subject land.</li><li>2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.</li></ol> |
|------------|--|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Bruce MacKenzie, John Morello, John Nell and Steve Tucker

Those against the Motion: Nil

Cr Paul Le Mottee returned to the meeting at 6:28pm during open Council.



**BACKGROUND**

The purpose of this report is to seek Council's endorsement to submit the Planning Proposal at (**ATTACHMENT 1**) to the Department of Planning and Environment, requesting a Gateway Determination.

**Subject land:** Lot 11 DP881743, 713 Newline Road, Eagleton

**Proponent:** LeMottee Group

**Proposed Changes:** Amend Schedule 1 of the Port Stephens Local Environmental Plan 2013 to allow detached dual occupancy development on the subject land.

**Zone:** RU1 Rural Production

**Area of land:** Six (6) hectares

The land holder is seeking to change the approved use of a tourist facility and manager's residence to a detached dual occupancy on the subject land. However, under the *Port Stephens Local Environmental Plan 2013 (PSLEP 2013)*, a dual occupancy is not permitted on the subject land as a minimum lot size of 20 hectares is required on land in the RU1 Primary Production Zone. The subject site is six hectares. A Locality Plan (**ATTACHMENT 2**) shows the subject site.

Previously, the proposed dual occupancy was also not permitted under Clause 14 of the *Port Stephens LEP 2000*, which prohibited dwelling houses and dual occupancy on lots, such as this one, that were created for another intended use. Furthermore, as discussed below, there is a covenant on the title of the property restricting its use for dual occupancy.

In order to allow the proposed change of use, an amendment to Schedule 1 Additional Permitted Uses of the PSLEP 2013, to include development for the purposes of a dual occupancy on the subject land, is required.

In November 1998, approval was granted on the subject land for a tourist facility, manager's residence and subsequent subdivision, pursuant to Clause 12(b) of the *Port Stephens LEP 1987*, which, at the time, allowed for the subdivision of rural land for an approved use other than dwellings. As such, the subdivision did not result in an additional dwelling entitlement. The development consent required the land to be burdened by an 88B instrument restriction under the *Conveyancing Act 1919*, prohibiting a dwelling or duplex (Condition 6 of L1055/98).

The tourist facility included a water-ski school and associated tourist lodge. However, the business became unviable in 2003 due to changes made by the Department of Land and Water Conservation, Waters Authority and Council regarding the use of waterways.



**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015**

A Mayoral Minute dated 28 July 2009 resolved to initiate an amendment to Clause 14 of the Port Stephens LEP 2000 to enable the permissibility of dwellings on allotments created for approved uses prior to the appointed date (being 29 December 2000). Clause 14 dealt with dwelling houses and dual occupancies in Rural Zones. This amendment sought to allow the proposed change of use however it did not proceed. The matter was considered through the preparation of the principal LEP, but was not included because the LEP sought to transition the existing provisions into the standard instrument template, without any significant policy change. As such, a standard minimum lot size for dual occupancy development was applied.

Since this time, the land holder has lodged numerous development applications seeking a change of use from tourist facility and manager's residence to dual occupancy. These applications have been refused as dual occupancy is prohibited under previous and current LEPs.

At its meeting on 10 March 2015, Council refused a development application for a change of use from tourist facility to dual occupancy due to the proposed development being prohibited under the LEP 2013. However, at this time, Council recommended that Council Officers write to the applicant, encouraging them to lodge a planning proposal seeking an amendment to Schedule 1 to allow the use of the existing buildings for dual occupancy. Council also resolved to waive any fees associated with the planning proposal.

Should the planning proposal be supported, a new Development Application seeking a change of use to a dual occupancy will need to be lodged. Further, as there is an operational consent over the land which prohibits dual-occupancy/dwellings on the subject lot (condition 6 of L1055/98), a Section 96 application must also be lodged (concurrently) seeking the removal of this condition. The 88B instrument restriction will also need to be removed from the title of the property.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b>   | <b>Delivery Program 2013-2017</b>             |
|--|---|
| Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations. | Provide Strategic Land Use Planning Services. |

**FINANCIAL/RESOURCE IMPLICATIONS**

Council Officers determined that the planning proposal is a Category A Local Environmental Plan under Council's current Fees & Charges 2015-2016, attracting a total fee of \$8,696. However, at its meeting held on 10 March 2015, Council resolved to waive the planning proposal fees.

| <b>Source of Funds</b> | <b>Yes/No</b> | <b>Funding (\$)</b> | <b>Comment</b>   |
|------------------------|---------------|---------------------|--|
| Existing budget        | Yes           |                     | The planning proposal will be progressed under existing budget allocation. |
| Reserve Funds          | No            |                     |  |
| Section 94             | No            |                     |  |
| External Grants        | No            |                     |  |
| Other                  | No            |                     |  |

**LEGAL, POLICY AND RISK IMPLICATIONS**

**Port Stephens Local Environmental Plan 2013**

Under the provisions of the PSLEP 2013, a dual occupancy is only permissible on the subject land where it has a minimum size of 20ha. The subject site is approximately six hectares.

In order for the proposed dual occupancy to be permitted, an amendment to Schedule 1 Additional Permitted Uses of the PSLEP 2013 is required as follows:

The 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:

**X 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.

**Development in Rural Zones**

The dual occupancy is a prohibited use, and the subdivision and existing buildings were specifically approved for a tourist facility, with a covenant restricting their use as a dwelling / dual occupancy. Furthermore, additional residents in rural areas increases the potential for land use conflict between the rural residential use of the land and agricultural pursuits and increases demand for services in remote areas. For these reasons, it is considered that the proposal has limited strategic justification, despite the minimal environmental impacts of the change of use.

**Port Stephens Planning Strategy 2011**

The Port Stephens Planning Strategy 2011 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.

**Lower Hunter Regional Strategy**

The planning proposal is inconsistent with the objectives of the Lower Hunter Regional Strategy, 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 the Planning Proposal at **(ATTACHMENT 1)**.

**Environmental Planning and Assessment Act 1979**

Part 3 of the Act requires Council to endorse the plan in order for it to be submitted to the Department of Planning for a Gateway Determination.

| <b>Risk</b>   | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|---|----------------------------|--|-----------------------------------|
| There is a risk that precedent is created.  | Low                        | The circumstances on the subject land are unique and provide sufficient justification for the proposal. It is unlikely that similar circumstances exist and as such precedent is unlikely. | Yes                               |
| There is a risk that the planning proposal will be rejected by the Department of Planning and Infrastructure due to an inconsistency with the Lower Hunter Regional Strategy. | Low                        | Provide a detailed assessment of the planning proposal against the Sustainability Criteria - see Attachment 3 to planning proposal at <b>(ATTACHMENT 1)</b> .                              | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposal will have minimal social or economic benefit to the community.

However, it will provide a mechanism for the viable use of existing buildings on the site and will have a significant positive economic benefit for the land owner.

The planning proposal is unlikely to have any environmental implications as the buildings already exist on the land and no further development is proposed.

Acid Sulfate 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.

Flooding

The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year floodplain and no further development will be permitted on flood prone land.

Rural Vista

The buildings already exist and therefore the proposal will have no impact on the surrounding rural vista.

**CONSULTATION**

The planning proposal will be exhibited in accordance with the gateway determination. Given the minor nature of the proposal, it is likely that a 14 day exhibition period will suffice.

The gateway determination will detail government agency consultation requirements.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Planning Proposal - 713 Newline Road, Eagleton. (Provided under separate cover)
- 2) Locality Plan. (Provided under separate cover)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## Attachment 4 – Sustainability Criteria Assessment

| Criteria                 | Comment   |
|--------------------------|---|
| Infrastructure provision | The planning proposal will allow the land holder to lodge an application for a 'change of use' for existing buildings on the site. There is adequate infrastructure in place and the proposal will not generate additional infrastructure requirements.   |
| Access                   | There is existing and adequate access to the site. The planning proposal and subsequent change of use will have a negligible impact on the existing road network.   |
| Housing diversity        | The planning proposal will provide additional housing supply in the LGA. However, this contribution is insignificant.   |
| Employment lands         | The planning proposal will not add to, or subtract from employment lands. The existing business on the site is no longer viable due to changes made to the way in which the river can be utilised. The planning proposal will allow an alternate, viable use of the land.   |
| Avoidance of risk        | <p>The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year flood level.</p> <p>The proposal satisfies the requirements of Planning for Bushfire protection Guidelines 2006.</p> <p>The proposal will not create land use conflict with adjoining development, which is predominately rural / rural-residential development.</p> |
| Natural resources        | The planning proposal will not impact on natural resources, including agriculture. The current approved use of the site for a tourist facility is no  |

|                                    |  |
|------------------------------------|--|
|                                    | <p>longer viable, and the proposed use for dual occupancy represents the most appropriate and viable use for the site.</p>   |
| <p>Environmental protection</p>    | <p>The planning proposal will have minimal environmental impact as the site is mostly cleared and contains little vegetation. No new buildings are proposed.</p> <p>The change of use could potentially improve conditions in the Williams River by decreasing the number of skiers and wakeboarders using the river in association with the tourist facility.</p> |
| <p>Quality and equity services</p> | <p>Government services in nearby Raymond Terrace can be easily accessed by future residents. The planning proposal will have negligible impact on existing services.</p>   |

## Attachment 5 – Gateway Determination



Mr Wayne Wallace  
General Manager  
Port Stephens Council  
PO Box 42  
Raymond Terrace NSW 2324

Our ref: PP\_2015\_PORTS\_007\_00 (14/02614)

Att: Sarah Connell

Dear Mr Wallace,

### **Planning Proposal to amend Port Stephens Local Environmental Plan 2013**

I am writing in response to Council's letter 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 allow additional permitted uses (dual occupancy) at 713 Newline Road, Eagleton.

As delegate of the Minister for Planning, 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 inconsistencies with Section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 6.3 Site Specific Provisions are of minor significance. The inconsistencies with section 117 Direction 5.1 Implementation of Regional Strategies are of minor significance and the planning proposal is not considered to undermine the land use strategy, policies, outcomes or actions of the Lower Hunter Regional Strategy. No further approval is required in relation to these Directions.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

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 to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

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.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Should you have any questions regarding this matter, I have arranged for Amy Blakely from the Hunter office to assist you. Ms Blakely can be contacted on (02) 4904 2723.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Rowland', written in a cursive style.

15 September 2015

**David Rowland**  
**General Manager**  
**Hunter and Central Coast Region**  
**Planning Services**





## Gateway Determination

**Planning Proposal (Department Ref: PP\_2015\_PORTS\_007\_00):** to allow dual occupancy at 713 Newline Road, Eagleton under Schedule 1 Additional Permitted Uses.

I, the General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to allow dual occupancy at 713 Newline Road, Eagleton should proceed subject to the following conditions:

1. 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 **14 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 (Planning & Infrastructure 2013)*.
2. A public hearing is not required to be held into the matter by any person or body 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).
3. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

A handwritten signature in black ink, appearing to read 'D Rowland'.

15 September 2015

**David Rowland**  
**General Manager**  
**Hunter and Central Coast Region**  
**Planning Services**  
**Department of Planning and Environment**

**Delegate of the Minister for Planning**



**WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

| Number               | Name   |
|----------------------|--|
| PP_2015_PORTS_007_00 | Planning proposal to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae under Schedule 1 Additional Permitted Uses |

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guideline for the preparation of local environmental plans" and "A guide to preparing planning proposals".

Dated 15 September 2015

A handwritten signature in black ink, appearing to read "D. Rowland".

**David Rowland  
General Manager  
Hunter and Central Coast Region  
Planning Services  
Department of Planning and Environment**