

SECTION 59 PLANNING REPORT

Port Stephens Local Environmental Plan 2013 (Amendment No. 15)

Planning proposal details:

PP_2014_PORTS_006_00

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

Planning proposal summary:

Planning proposal (Department Ref: PP_2013_PORTS_006_00): to amend Port Stephens LEP 2013 by:

- Rezoning the subject land from RU2 Rural Landscape to B1 Neighbourhood Centre
- Amending the lot size map for the subject size to remove the lot size of 20ha
- Amending the height of building map to include a 9m height of building limit
- Introducing a local provision to restrict the gross floor area of a single premises to 500m² and the total floor space of development to 2,100m²

Date of Gateway Determination:

9 December 2014

1.0 SUMMARY

Background

The planning proposal seeks to amend the zoning of the subject site (1519 Richardson Road, Salt Ash) from R2 Rural Landscape to B1 Neighbourhood Centre to cater for additional small scale retail, business and community uses for the local community and passing commuters.

The Port Stephens Planning Strategy (PSPS) identifies the subject site as a 'Smaller Village Centre'. An increased floor space demand of 1,288m² was identified in the PSPS, resulting primarily from increased vehicle movements along Richardson and Nelson Bay Roads. Under existing use rights, the site is able to cater for an additional 450m² of floor space.

A Planning Proposal was lodged with Council on 15 August 2014, accompanied by an Economic Impact Assessment (EIA). The planning proposal demonstrates, through the use of more accurate data, that an increased retail floor area of 2,100m² is appropriate for the site.

The proposal is seeking to replace the existing zoning over the current site and extend over the adjoining lot. This zoning will allow for a variety of

commercial uses, such as a pharmacy, newsagent, liquor store or grocery store each with a single commercial premise no greater than 500m² and a combined floor space no greater than 2,100 m².

Public exhibition

The planning proposal was exhibited from 7 January to 4 February 2015. No submissions were received.

Key changes

No changes as a result of consultation.

2.0 GATEWAY DETERMINATION

- Date of Gateway Determination: 9 December 2014
- Timeframe for completion of planning proposal: 9 months with further extension of 12 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 7 January to 4 February 2015
- 0 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 consulted with the following government agencies:

NSW Trade and Investment – Mineral Resources and Energy – Geological Survey of New South Wales

No issues were raised in relation to the planning proposal.

Department of Primary Industries – Agriculture

No issues were raised in relation to the planning proposal.

Office of Environment & Heritage

OEH acknowledges that the site is predominantly managed lawns with occasional trees. However, OEH are not satisfied that the planning proposal will have no impacts on threatened species as a number of species listed under the *Threatened Species Conservation ACT 1995* and the

Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* have been recorded on the site, including the koala, have been recorded on the site. The site contains a number of *Eucalyptus robusta*, which is a 'preferred koala feed tree' and as such council needs to be satisfied that the proposal is consistent with the Port Stephens Comprehensive Koala Plan of Management.

Comment: Council's Natural Resources Co-ordinator advised that the site is not identified as koala habitat in the CKPoM and the planning proposal is therefore not inconsistent with the CKPoM. Any impacts on koala feed trees will need to be considered during the assessment of a future development application.

Roads and Maritime Services

RMS do not object to the planning proposal but provide the following advice:

- RMS do not have any proposal to acquire any part of the site;
- Traffic Impact Assessment will be required for future development applications;
- No additional accesses will be granted off Richardson Road; and
- Entrance to the site to accommodate additional traffic be considered further along Salt Ash Road to minimise the possibility of congestion extending out into the Nelson Bay / Richardson Road roundabout.

Comment: RMS comments noted with advice to be considered in future development application.

Hunter Water Corporation

Hunter Water advised that the site is not within the drinking water catchment and therefore would not be providing comment.

Rural Fire Services

RFS raised no concerns about the planning proposal with regards to bush fire matters.

Environment Protection Authority

The EPA has provided comments due to the site's location within the Williamtown RAAF Base Perfluorooctanesulfonic (PFOS) Investigation Area. The EPA notes that the "*Report on Preliminary Site Investigation and Targeted Site Investigation*" does not reference PFOs and therefore there is a potential inadequacy in the contamination assessment. It was advised that any change to activity permitted on a property should not allow anything which would increase the risk of movement of groundwater off the property.

The EPA further advised that based on their available knowledge, the identification of PFOs in groundwater under the site should not preclude the proposed small scale expansion of business activities on the site following

rezoning. However the EPA understands that the general locale can be subject to water ponding and/or flooding and recent testing has identified that PFOs has been found in some floodwaters. Proposals should not be permitted that might increase the risk of potential exposure pathways due to the activities on site, especially for sensitive individuals such as children.

Comment: A development application will need to consider PFOS contamination, particularly for sensitive land uses. Design of any new development will need to demonstrate that surface water has been adequately considered and managed on site to minimise water ponding on this site.

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

Section 117 Directions

The planning proposal is consistent with s117 directions.

1.1 Business and Industrial Zones

This Proposal is consistent with this Direction as it proposes new employment lands within a centre that is identified by the Port Stephens Planning Strategy, which is guided by the centres approach outlined in the Lower Hunter Regional Strategy. This Proposal will not undermine the role of the existing centres hierarchy.

1.2 Rural Zones

This Proposal is inconsistent with this Direction as it seeks to rezone land from a rural zone to a business zone. This inconsistency is of minor significance as the site has limited agricultural value and is the logical extension of the existing centre. This is consistent with the demand identified by the Commercial and Industrial Lands Study, which informed the PSPS.

On 13 April 2017, the Secretary's Delegate confirmed that the inconsistency is of minor significance.

1.3 Mining, Petroleum and Extractive Industries

Half of the site is already developed for business land uses and the site is located close to rural residential development, which means it is unlikely that the site is suitable for any surface mining or extractive industry. In addition, the site is not known to contain any resources of coal, other minerals or extractive materials of State or Regional Significance.

The inconsistency with this Direction is of minor significance given that the nature of existing development already restricts the potential development of mining, petroleum production and extractive industries. The concurrence of the Director General is requested.

1.5 Rural Lands

This Proposal is inconsistent with this Direction as it seeks to rezone land from a rural zone to a business zone. This inconsistency is believed to be of minor significance as the site has limited agricultural value and is the logical extension of the existing centre.

On 13 April 2017, the Secretary's Delegate confirmed that the inconsistency is of minor significance.

4.3 Flood Prone Land

The Proposal is inconsistent with this Direction as it is located within the Flood Planning Area. The inconsistency with this direction is considered to be of minor significance because:

- The existing finished floor levels are 2.25 AHD and the 100 year ARI flood level is estimated at 1.79AHD. No issues have been experienced on this site
- The site is not located in a floodway area
- Council Flooding Engineers identified how development may impact on drainage patterns can be provided post-gateway. This would include similar information to a stormwater drainage plan, such as:
 - Location and type of detention system
 - Demonstrated volume for maximum AEP
 - Pipes, pits, overland flow and discharge access points
 - Orifice type, location and screening facility
 - Slope/gradient of the land
 - Post-development flows equal to pre-development flows

The concurrence of the Director General is not required as it is in accordance with the Floodplain Risk Management Plan and is of minor significance.

5.1 Implementation of Regional Strategies

The site is located within the Biodiversity Corridor identified in the Hunter Regional Plan and is therefore inconsistent with this Direction. Notwithstanding, the inconsistency is considered to be of minor significance as the site is predominantly managed lawns with occasional trees. OEH raised concerns about the site containing threatened species and Koala feed trees and recommended that Council ensure that the site is consistent with the Port Stephens Comprehensive Koala Plan of Management. Council's Natural Resources Section confirmed that the site is not identified as koala habitat and the proposal is therefore not inconsistent with the CKPoM. Impacts on koala feed trees will be considered through a future development application. Given that the site contains an existing service station and only occasional trees, the impact on biodiversity corridors is considered to be minimal.

On 13 April 2017, the Secretary's Delegate confirmed that the inconsistency is of minor significance.

State Environmental Planning Policies

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided as follows:

SEPP 55 (Remediation of Land)

A contamination assessment was undertaken to determine the suitability of the site for uses permitted under the B1 Neighbourhood Centre Zone. The contamination assessment concludes that the site is suitable for rezoning, however, further investigation will be required at the development assessment stage should a sensitive land use, such as a childcare facility, be proposed. Remediation work or design considerations may be required to ensure that the site is suitable for sensitive developments.

SEPP (Rural Lands) 2008

Refer to s117 Direction – 1.5 Rural Lands

Lower Hunter Regional Strategy

The Proposal is consistent with the poly-centric hierarchy employed by the Lower Hunter Regional Strategy. The identification of the subject site as a smaller village centre within the Port Stephens Planning Strategy (PSPS) is consistent with this approach, which is underpinned by the Port Stephens Commercial and Industrial Lands Study. This Proposal does not undermine this hierarchy.

Draft Hunter Regional Plan

The draft plan highlights the need for local planning to consider where retail space can be developed, having regard for current supply and demand for new space. As detailed in the planning proposal, the proposal is consistent with the Port Stephens Planning Strategy and the Port Stephens Commercial and Industrial Lands Study. An Economic Impact Assessment identified a need for the additional commercial floor space and shows that the demand cannot be accommodated on the on the current site under existing use rights.

Community Strategic Plan

The relevant directions of the Port Stephens Integrated Planning Framework are:

11.1.1.1 Prepare and review Statutory, including rezoning applications and Development Control Plans

11.1.1.4 Provide statutory planning support and coordination of Greenfield development

The administration of the proposal is consistent with the recommendations of the Lower Hunter Regional Strategy and Port Stephens Planning Strategy.

Port Stephens Planning Strategy

The PSPS identifies the site as a 'smaller village centre' which is generally defined as a strip or cluster of shops with services available to local residents of the surrounding neighbours or communities and meets their day to day needs. This increase in commercial space does not place the centre higher within this Centre's Hierarchy, but rather reflects the role of the Site in catering for increased traffic volumes. The site's location on the corner of Nelson Bay and Richardson Road exposes it to high levels of passing traffic. The PSPS contains traffic forecast data, which is expected to increase to 57,245 vehicle movements by 2031.

These figures were reinforced through a recent request to the Roads and Maritime Services for updated traffic count data. The two trip counters of relevance: 1) 05649 – Richardson Road and 2) 05396 – Nelson Bay Road have not been updated since the production of the Port Stephens Planning Strategy in 2011.

Port Stephens Commercial and Industrial Lands Study

The Commercial and Industrial Lands Study, which was undertaken to inform the PSPS identifies Salt Ash as:

'a centre located on Nelson Bay Road opposite the local public school. The anchor of the centre is the large petrol station. In total, there are around 1,800m² of occupied floor space in this centre. The nearest centre with a full-line supermarket is Medowie. Salt Ash benefits from being highly visible and easily accessible for through traffic travelling between the peninsulas and Newcastle'

'no plans for increased residential density in the areas surrounding the centre, any increases in demand is likely to come from the additional passing traffic as development on the peninsula occurs. Floor space demand is forecast to increase by 450m² between 2009 and 2013, which is likely to be easily accommodated on the two lots which currently host the petrol station and other retail. These lots constitute the extent of the centre'

A closer examination of the existing floor space indicated it was not 1,800m², but closer to 962m². This was the result of the building overhangs (i.e. awnings), being calculated as leasable floor space and meant that the justification for an additional 1,288m² already existed.

The PSPS assumed that the subject site could cater for an increase of 450m² under existing-use rights based on the recommendations of the Commercial

and Industrial Lands Study that demand 'could easily be accommodated on the two lots which currently host the petrol station and other retail. These lots should constitute the extent of the centre'.

Further economic justification was sought by requesting that the Proponent complete an Economic Impact Assessment. The EIA demonstrated an increase floor space of 2,100m².

6.0 PARLIAMENTARY COUNSEL OPINION

Parliamentary Counsel Opinion was sought on 11 May 2016 and received on 20 May 2016.

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

- Amending the land zone map LZN_004 for the subject site to replace the Zone RU2 Rural Landscape with Zone B1 Neighbourhood Centre
- Amending the lot size map LSZ_004 for the subject site to remove the lot size of AB2 -20Ha
- Amending the height of building map HOB_004 for the subject site to include 9m height of building limit

9.0 RECOMMENDATION

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

NOTES:

- Final version of the Planning Proposal (including Council report and resolution dated 12 April 2016)