

Planning and Assessment

IRF21/2959

Gateway determination report

LGA	Port Stephens
PPA	Port Stephens Council
NAME	Seaside Boulevard, Fern Bay (6 homes, 0 jobs)
NUMBER	PP_2021_3299
LEP TO BE AMENDED	Port Stephens Local Environmental Plan 2013
ADDRESS	2, 4, 4A, 4B, and 6 Seaside Boulevard, Fern Bay 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay
DESCRIPTION	Part Lot 27, DP 270466 Lots 2, 3, 4, 20, 21 & 22, DP 280072 Part of Lots 5, 19, 23 & 24, DP 280072
RECEIVED	16 July 2021 (Adequate)
FILE NO.	IRF 21/2959
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

1. INTRODUCTION

1.1 Site description

The proposed rezoning area is approximately 1 hectare and forms part of the Seaside Estate Residential Subdivision (Major Project ref: MP 06_0250). Subdivision of the site has already been undertaken, and suitable infrastructure including roads, drainage and utility services are available to the subdivided lots. Council advise six of the lots (Lots 4, 5, 19, 23, 24) have existing residential approvals and Lot 20 is currently under assessment for residential development in accordance with split zone provisions and clause 5.3 of the *Port Stephens Local Environmental Plan 2013*. The proposed rezoning will facilitate residential development on the remaining lots to which clause 5.3 does not apply.

Investigations identify the site as having the following constraints: acid sulfate soils, koala habitat, Obstacle Height Limitation, flooding, and bushfire.



Figure 1: Subject Site (outlined black)

1.2 Existing planning controls

The site is zoned B1 Local Centre and has no specified minimum lot zone. An 8m height of building standard applies to the site. The existing I maps are provided in Figures 2-4 below.

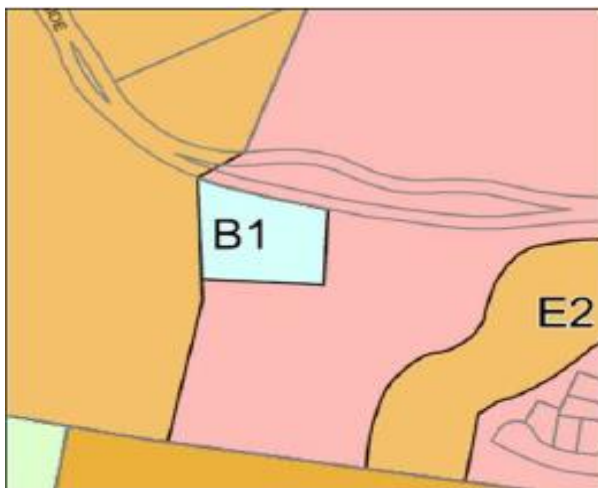


Figure 2: Existing Land Zoning Map Sheet LZN_004A

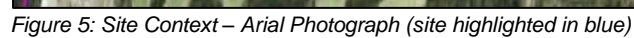


Figure 3: Existing Lot Size Map Sheet LSZ_004A



Figure 4: Existing Height of Building Map Sheet HOB_004A

The surrounding land is zoned R2 Low Density Residential to the north, east and south and E2 Environmental Conservation to the west. Seaside Estate consists of low-density residential dwellings, including single dwellings and dual occupancies, a childcare centre and two parks. The site context is provided in Figures 5 and 6 below.



2. PROPOSAL

2.1 Description of planning proposal

The planning proposal seeks to rezone the site from B1 Neighbourhood Centre to R2 Low Density Residential. It is also proposed to introduce a minimum lot size of 500 square metres and amend the height of buildings from 8 metres to 9 metres.

These provisions are consistent with the existing broader Seaside Estate controls. Major Project - MP 06_0250 (specifically amendment 9) resulted in the subdivision of the site into small commercial lots. The planning proposal will allow the site to provide additional residential housing within the Seaside Estate.

In 2017, a Commercial Lands Study was undertaken by Hill PDA to determine the most suitable location for a new retail centre. The study does not identify Seaside Estate as a preferred location for a commercial centre or necessary for the needs of the community. The study informed the *Fern Bay and North Stockton Strategy 2020*, which was adopted by Port Stephens Council and City of Newcastle.

2.2 Objectives or intended outcomes

The intended outcome of the planning proposal is to enable low density residential development within the Seaside Estate consistent with the established character of the locality and implement the findings of the *Fern Bay and North Stockton Strategy 2020*. The objectives are clear and do not require amendment prior to community consultation.

2.3 Explanation of provisions

The intended outcome of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

Provision	Existing Provision	Proposed Amendment
Zoning	B1 Neighbourhood Centre	R2 Low Density Residential
Lot size	-	500 square metres
Height of Building	8m	9m

2.4 Mapping

The maps are clear and adequate for agency and community consultation. The following mapping changes are proposed to implement the objectives of the planning proposal:

- amend Land Zoning Map Sheet LZN_004A from B1 Neighbourhood Centre to R2 Low Density Residential;
- amend Lot Size Map Sheet LSZ_004A from no specified minimum lot size to 500 square metres; and
- amend Height of Building Map Sheet HOB_004A from I (8 metres) to J (9 metres).

The proposed local environmental plan maps are provided in Figures 7-9 below.

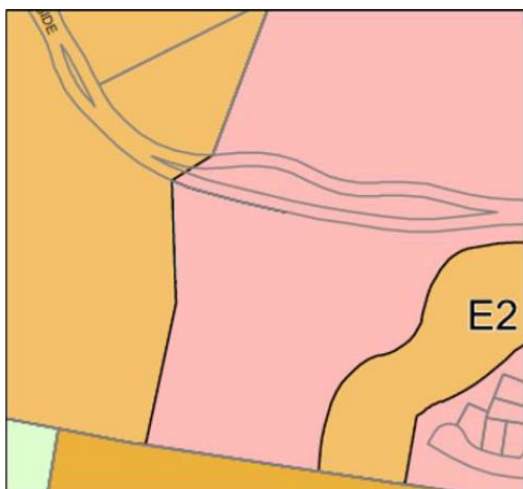


Figure 7: Proposed Land Zoning Map Sheet LZN_004A



Figure 8: Proposed Lot Size Map Sheet LSZ_004A



Figure 9: Proposed Height of Building Map Sheet HOB_004A

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is consistent with the *Fern Bay and North Stockton Strategy 2020*, which has been endorsed by Newcastle City and Port Stephens Councils.

The strategy was informed by the *Fern Bay and North Stockton Commercial Lands Study 2017*. The study assessed the suitability of the site, as well as five alternative sites, to accommodate a new town centre in the Fern Bay and North Stockton area. The site was found to be the least favourable due to issues regarding its location, exposure, accessibility, and walkable catchment.

Under the existing B1 Neighbourhood zone residential development is limited to attached dwellings, boarding houses and shop top housing. The character of this type of development is not compatible with the low-density character of the broader locality. Furthermore, Council has progressed with low density residential outcomes on some of the existing lots via clause 5.3 of the *Port Stephens Local Environmental Plan 2013*. The planning proposal is the best way of achieving the objectives.

4. STRATEGIC ASSESSMENT

4.1 Regional / District

Hunter Regional Plan 2036

The *Hunter Regional Plan 2036* provides high level directions for growth and change in the region. Fern Bay is identified as a centre of local significance and identified as an area to deliver future housing and urban renewal opportunities. The following relevant directions apply to this proposal:

Direction	Comment
<i>Direction 16 – Increase resilience to hazards and climate change</i>	The land is mapped as low H\hazard flood fringe, which does not prohibit residential development. Future development of the site will need to have regard to the flood characteristics of the site to plan for resilience to hazards.
<i>Direction 17 – Create healthy built environments through good design</i>	The planning proposal will provide additional housing in an area that has existing infrastructure to connect to parks, shops, and services.
<i>Direction 21 – Create a compact settlement</i>	The site adjoins the existing Seaside Estate and it is a logical extension of the predominant development type in the locality.
<i>Direction 23 – Grow centres and renewal corridors</i>	The planning proposal will facilitate additional housing within a local centre and within 20 minutes of the strategic centres of Newcastle City and Raymond Terrace.
<i>Direction 24 – Protect the economic functions of employment land</i>	Whilst the planning proposal will reduce land zoned for employment uses and functions, there are other locations identified within the Commercial Lands Study that have more favourable attributes for a local centre. Additionally, the study shows the planning proposal will not impact on the viability of a future town centre.

The planning proposal is consistent with the *Hunter Regional Plan 2036*.

Greater Newcastle Metropolitan Plan 2036

The planning proposal is consistent with the following strategies and their associated actions:

- *Strategy 14 – Improve resilience to natural hazards* has been addressed during the subdivision of the site. Future residential development will need to meet the relevant flood standards.
- *Strategy 16 – Prioritise the delivery of infill housing opportunities within existing urban areas* as the planning proposal seeks to provide additional housing within the Seaside Estate, which is an existing urban area.

- *Strategy 17 – Unlock housing supply through infrastructure coordination and delivery* as the land is serviced by existing infrastructure and will provide additional housing in an appropriate location; and
- *Strategy 20 – Integrate land use and transport planning* as the planning proposal will access an existing bus route.

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

4.2 Local

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal is consistent with the LSPS and its stated planning priorities as follows:

- *Planning Priority 4 Ensure suitable land supply* as it will provide additional housing on land that is serviced and unconstrained.
- *Planning Priority 5 Increase diversity of housing stock* as the R2 Low Density Residential zone enables a greater diversity of low to medium density housing formats than the B1 Neighbourhood Centre zone.
- *Planning Priority 7 Conserve biodiversity values and corridors* by enabling residential development within an area that has already been cleared, thereby minimising additional impacts to biodiversity values.

The planning proposal is consistent with the *Greater Newcastle Metropolitan Plan 2036*.

Port Stephens Community Strategic Plan 2018 – 2028

The Port Stephens Community Strategic Plan 2018-2028 seeks to identify community aspirations and priorities over a 10-year period and outlines the role of Council in delivering these priorities. The planning proposal is consistent with the following focus areas of the plan:

- *P3 Thriving and safe place to live*
- *E3 Ecosystem function*
- *E3 Environmental Sustainability*

The planning proposal is consistent with the Port Stephens Community Strategic Plan 2018-2028.

Live Port Stephens Local Housing Strategy

The Live Port Stephens Local Housing Strategy provides the strategic direction for future housing in the local government area. The planning proposal is consistent with the identified priorities of the strategy as it will provide additional housing supply in a suitable established location with access to major employment areas and transport.

The planning proposal is consistent with the Live Port Stephens Local Housing Strategy.

Fern Bay and North Stockton Strategy 2020

Port Stephens Council and City of Newcastle adopted the joint *Fern Bay and North Stockton Strategy 2020* to guide future development and ensure sufficient community infrastructure is provided for the growing community. The site is located within Precinct 5 – Seaside Estate. The structure plan in the Strategy included an allowance for the consideration of a neighbourhood centre, with a neighbourhood supermarket, in Fern Bay (see Figure 10).

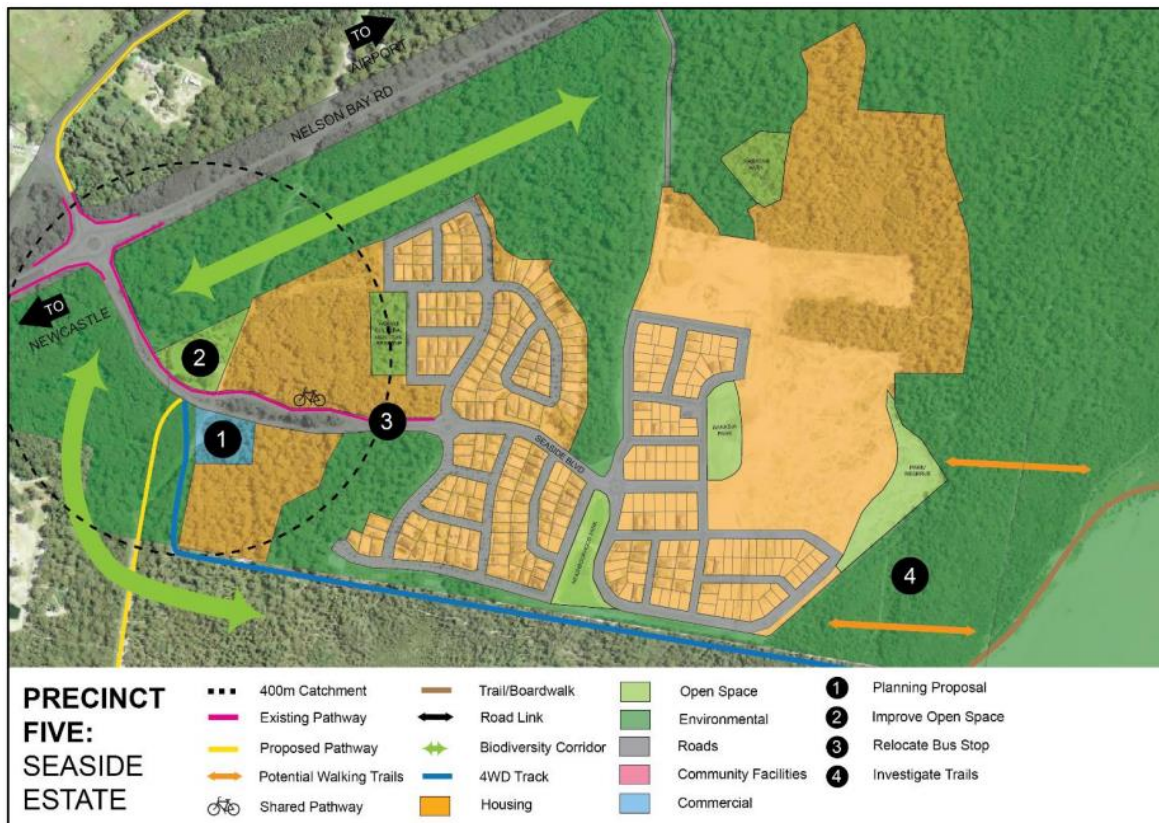


Figure 10: Structure Plan – Precinct Five: Seaside Estate (site coloured blue and notated 1)

As noted previously, the site has the least favourable attributes to support a local centre. There are other sites identified in the Strategy close to the Seaside Estate that demonstrate more suitable locational, access and site-specific characteristics that will better meet the needs of the community.

The planning proposal is consistent with the *Fern Bay and North Stockton Strategy 2020* as it seeks to provide additional housing utilising existing infrastructure and will support any proposals to establish centres in other more appropriate identified locations. The intended outcome of this planning proposal supports the Strategy and the recommendations contained within the informing Commercial Lands Study.

The planning proposal is consistent with the *Fern Bay and North Stockton Strategy 2020*.

4.3 State environmental planning policies (SEPPs)

SEPP (Koala Habitat Protection) 2021

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) was prepared in accordance with Part 3 of the (now repealed) SEPP 44 – Koala Habitat Protection. The planning proposal is consistent with Appendix 2 of the CKPoM which defines the performance criteria for planning proposals.

The western portion of the site includes preferred Koala habitat. This area has already been zoned B2 Neighbourhood Centre. The planning proposal states the portion of the site identified for development is to the east and does not contain preferred Koala habitat. It has already been cleared and subdivision works undertaken as part of the major project approval, which included an assessment of flora and fauna values at the time of assessment. The parcel of vegetation in the

western portion of the site will be retained as part of the landscape strategy for subdivision approval.

The planning proposal will not incur any additional clearing and is unlikely to impact on koala habitat or movement.

The planning proposal is consistent with the SEPP.

4.4 Section 9.1 Ministerial Directions

Direction	Comment
1.1 Business and Industrial Zones	<p>This site is not an 'identified centre' in the <i>Hunter Regional Plan 2036</i> or <i>Greater Newcastle Metropolitan Plan 2036</i>. The planning proposal is generally in accordance with these relevant strategies.</p> <p>The inconsistency with this direction is of minor significance because the land is considered unlikely to be developed for commercial land uses in the foreseeable future. Delivering housing in a location already serviced will support the existing commercial centre and create employment opportunities in the construction industry.</p>
2.3 Heritage Conservation	<p>A search of the AHIMS database of the site has been undertaken and several items of Aboriginal heritage were identified as being recorded near the site.</p> <p>Archaeological investigations were undertaken as part of subdivision approval, and the subdivision layout reflects the cultural sensitivity of the site. A Cultural Heritage Management Plan was prepared in consultation with the Worimi Local Aboriginal Land Council and applies to the site.</p> <p>Rezoning the site from B1 Neighbourhood Centre to R2 Low Density Residential is unlikely to impact on heritage items as the approved lot layout will not change.</p> <p>The planning proposal is consistent with this direction.</p>
2.6 Remediation of Contaminated Land	<p>A Limited Phase 1 Assessment was prepared for the subdivision approval. The report reviewed historical information about the site and concluded that there are no potentially contaminating activities undertaken on the site. Given the assessments previously carried out, the existing urban zone and nature of the land, it is considered the site is not contaminated, and no further assessment is required.</p> <p>The planning proposal is consistent with this direction.</p>
3.1 Residential Zones	<p>The site is located within an existing residential neighbourhood on land that can make more efficient use of existing infrastructure and services.</p> <p>The planning proposal is consistent with this direction.</p>

Direction	Comment
3.4 Integrating Land Use and Transport	<p>Port Stephens Council provided an assessment against the policy based on the information available at the time, which is adequate.</p> <p>The planning proposal is consistent with the direction.</p>
3.5 Development Near Regulated Airports and Defence Airfields	<p>The site is mapped in the RAAF Base Obstacle Limitations or Operations Surface Map and Height Trigger Map. The proposed building height provisions do not trigger the requirement to refer the matter to the Department of Defence. Despite this, Council has indicated it will be undertaking consultation with the Department of Defence.</p> <p>The planning proposal is consistent with the direction.</p>
4.1 Acid Sulfate Soils	<p>The site is mapped as Class 4 acid sulfate soils. As the rezoning will not increase the permissible density for development, this direction can be addressed during the development application stage.</p> <p>The planning proposal is consistent with the direction.</p>
4.3 Flood Prone Land	<p>This direction applies because parts of the site are identified as low hazard flood fringe within the flood planning area. The planning proposal is seeking to rezone commercial land to residential.</p> <p>The planning proposal will not impact on potential flood behaviour on or off site as the subdivision, clearing, road and drainage works have already been completed at the subject site. As the lot layout is not proposed to be amended following a rezoning, there will be no increase in development.</p> <p>The planning proposal is consistent with the direction.</p>
4.4 Planning for Bushfire Protection	<p>The site is mapped as bushfire prone and will require consultation with the NSW Rural Fire Service to determine consistency with this direction.</p> <p>While the lots currently exist, the requirements for residential development under <i>Planning for Bushfire Protection 2019</i> must be addressed in the consultation phase as the lots were created for commercial purposes under a previous document.</p>
5.10 Implementation of Regional Strategies	<p>The planning proposal is consistent with this direction.</p>

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The rezoning of the site from B1 Neighbourhood Centre to R2 Low Density Residential is likely to have a positive social impact.

5.2 Environmental

The planning proposal is unlikely to result in any additional impacts on the natural environment. The site has already been assessed for development under the existing approval (MP 06_0250) for Seaside Estate, Fern Bay. Rezoning the land from B1 Neighbourhood Centre to R2 Low Density Residential will not alter the lot layout or require any physical works.

The parcel of vegetation in the western portion of the site will be retained as part of the landscape strategy for subdivision approval.

5.3 Economic

The lots are created and currently serviced. Six lots have existing dwelling approvals, and one is currently under assessment by Council.

The planning proposal may result in an economic impact in relation to the removal of B1 Neighbourhood Centre zoned land from the locality given investigations into alternative site are still being undertaken and an alternative site is not yet zoned.

6. CONSULTATION

6.1 Community

The planning proposal identifies that community consultation will be undertaken in accordance with the Gateway determination. Given the existing subdivision approval and six lots with dwelling approvals, it is appropriate the planning proposal be exhibited for 14 days.

6.2 Agencies

Council proposes agency consultation with:

- NSW Rural Fire Service;
- Commonwealth Department of Defence;
- Hunter Water Corporation; and
- Worimi Local Aboriginal Land Council.

The planning proposal does not include provisions that have the potential to impact on the capacity or function of Hunter Water assets. In this instance, consultation with Hunter Water Corporation is not considered necessary. Additionally, the existing subdivision approval and six dwelling approvals, it is not considered necessary for consultation to be undertaken with the Commonwealth Department of Defence and Worimi Aboriginal Local Aboriginal Land Council.

Consultation was undertaken with the City of Newcastle during the Department's assessment of the planning proposal, who advised that there are no objections to the planning proposal and that it is consistent with the *Fern Bay and North Stockton Strategy 2020*.

7. TIMEFRAME

Council's project timeline recommends a 9-month completion timeframe, noting that no additional studies would be required. It is recommended the Gateway determination require the planning proposal to be completed within 12 months to allow for consultation with the relevant agencies.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Due to the nature of the proposed amendments it is recommended that Council be given local plan-making delegations.

9. RECOMMENDATION

Council's strategic justification is supported.

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Ministerial direction 1.1 Business and Industrial Zones is minor and justified.
2. note that the consistency with section 9.1 Ministerial direction 4.4 Planning for Bushfire Protection is unresolved and will require consultation with the NSW Rural Fire Service.

It is recommended the delegate of the Minister of Planning and Public Spaces determine the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the NSW Rural Fire Service.
3. The time frame for completing the local environmental plan is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



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06/08/2021
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