

## Planning and Assessment

IRF21/2500

### Gateway determination report

<b>LGA</b>	Port Stephens
<b>PPA</b>	Port Stephens Council
<b>NAME</b>	Housekeeping Planning Proposal (0 homes, 0 jobs)
<b>NUMBER</b>	PP-2021-3689
<b>LEP TO BE AMENDED</b>	Port Stephens Local Environmental Plan 2013
<b>ADDRESS</b>	Various land across Local Government Area
<b>DESCRIPTION</b>	As above
<b>RECEIVED</b>	10 June 2021
<b>FILE NO.</b>	IRF21/2500
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Site description

The planning proposal applies to various land throughout the Port Stephens Local Government Area (LGA).

### 1.2 Existing planning controls

The planning proposal seeks to make amendments to the aims of *Port Stephens Local Environmental Plan 2013* and the following provisions:

- Clause 4.1C(4)(a) 'Exceptions to minimum lot sizes for certain residential development' which is currently limited to two lots;
- Clause 4.2B(3) 'Erection of dwelling houses on certain land in rural, residential and environmental protection zones' which limits the approval for a dwelling house on lots subject to a boundary adjustment to minor variations only;
- Clause 7.13 'Converting serviced apartments to residential flat buildings' is to ensure good design;
- Clause 7.19 'Development at Boundary Road, Medowie' which required a conservation agreement for the land;
- Clause 7.21 'Development at Medowie Road, Medowie' which required decommissioning of a poultry farm;
- Land use table for B1 Neighbourhood Centre Zone permits environmental protection works both without and with consent;

- Land use table for RE1 Public Recreation zone permits flood mitigation works both without and with consent;
- Land use table for B3 Commercial Core zone permits dwelling houses;
- Land use tables for residential and business zones prohibits caravan parks as an innominate use, that is it is neither permitted without or with consent and therefore prohibited by default;
- Land use table for RU2 the Rural Landscape zone prohibits child care centres and respite day care centres;
- Clause 7.17 'Events permitted without consent' permits temporary events without consent on public reserves and public roads only; and
- Schedule 2 'Exempt development' identifies exempt development not identified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### 1.3 Surrounding area

The planning proposal applies to various land through the LGA.

## 2. PROPOSAL

### 2.1 Description of planning proposal

The planning proposal seeks to make several housekeeping amendments to *Port Stephens Local Environmental Plan 2013* to update the aims, correct errors and anomalies, remove redundant provisions, amend land use tables, clarify matters; and identify additional exempt development.

The changes implement actions identified in *Port Stephens Local Strategic Planning Statement (LSPS)*, *Port Stephens Local Housing Strategy (Live Port Stephens)* and the *Port Stephens Recreation Strategy 2018*.

### 2.2 Objectives or intended outcomes

The objective is to amend *Port Stephens Local Environmental Plan 2013* to align with the *LSPS* and *Live Port Stephens* and correct errors and make minor changes.

The objective is clear.

### 2.3 Explanation of provisions

It is proposed to amend *Port Stephens Local Environmental Plan 2013* in the following way:

Item	Description
1	<p>Update Clause 1.2 – Aims of Plan:</p> <ul style="list-style-type: none"> <li>• To remove reference to repealed strategies and align with current Council strategies;</li> <li>• Remove aims that duplicate the objects of the <i>Environmental Planning &amp; Assessment Act 1979</i>; and</li> <li>• Include a mandatory aim from the <i>Standard Instrument (Local Environmental Plan) Order 2006</i> relating to arts and cultural activity.</li> </ul>

Item	Description
2	<p>Enable exceptions to minimum lot sizes for attached dwellings;</p> <ul style="list-style-type: none"> <li>• Clause 4.1C(4) will be amended to replace 'subdivision of land into 2 lots' with '2 lots or more'. This will enable a building containing more than two dwellings to be subdivided, as intended by the clause.</li> </ul>
3	<p>Ensure dwelling entitlements are retained for allotments that have been the subject of a boundary adjustment under the Local Environmental Plan;</p> <ul style="list-style-type: none"> <li>• Clause 4.2B(3) to correct an error that could extinguish dwelling entitlements following a boundary adjustment;</li> <li>• When clause 4.1E was added in 2016 to enable boundary adjustments below the minimum lot size, a corresponding change was not made to clause 4.2B(3) to enable these boundary adjustments below the minimum lot size other than where there would only be a minor re-alignment of boundaries.</li> </ul>
4	<p>Remove redundant clause relating to the conversion of serviced apartments to residential flat buildings;</p> <ul style="list-style-type: none"> <li>• Clause 7.13 was to prevent sub-standard residential accommodation. It is to be deleted as it duplicates; <ul style="list-style-type: none"> <li>i. The consideration of a development application required for the conversion of a serviced apartment to a residential flat building; and</li> <li>ii. Section 4.15(a)(i) of the <i>Environmental Planning &amp; Assessment Act 1979</i> requiring consideration of environmental planning instruments, in this case including State Environmental Planning Policy 65 Design Quality of Residential Apartment Development.</li> </ul> </li> </ul>
5	<p>Remove redundant provisions relating to development at Boundary Road, Medowie;</p> <ul style="list-style-type: none"> <li>• Clause 7.19, which requires a conservation agreement for the land, will be deleted as it has now been implemented.</li> </ul>
6	<p>Remove redundant provisions relating to development at Medowie Road, Medowie;</p> <ul style="list-style-type: none"> <li>• Clause 7.21, which requires decommissioning of a poultry farm, will be deleted as it has now occurred.</li> </ul>
7	<p>Amend the land use table for the B1 Neighbourhood Centre zone to remove 'environmental protection works' from being permitted without consent;</p> <ul style="list-style-type: none"> <li>• Environmental protection works are permitted both 'without consent' and 'with consent'. This will clarify that it is permissible 'with consent' and be consistent with other zones.</li> </ul>

Item	Description
8	<p>Amend the land use table for the RE1 Public Recreation zone to remove 'flood mitigation works' from being permitted with consent;</p> <ul style="list-style-type: none"> <li>Flood mitigation works are permitted both 'without consent' and 'with consent'. This will clarify that it is permissible 'with consent' and remove any uncertainty.</li> </ul>
9	<p>Prohibit single dwelling houses in the B3 Commercial Core zone;</p> <ul style="list-style-type: none"> <li>The land use table for the B3 Commercial Core zone, which applies to Raymond Terrace and Salamander Bay centres, will be amended to prohibit dwelling houses;</li> <li>The focus of this zone is to provide employment, services, retail and higher density residential accommodation and single dwelling houses are incompatible with the objectives of the zone;</li> <li>Dwelling houses are prohibited in all lower order commercial centres including the B1 Neighbourhood Centre and B2 Local Centre zones.</li> </ul>
10	<p>Prohibit 'caravan parks' in residential and business zones;</p> <ul style="list-style-type: none"> <li>Caravan parks are prohibited as an innominate use, that is they are neither identified as permissible 'without consent' nor 'with consent' and are therefore prohibited without being expressly listed as such; and</li> <li>Council has planned for the provision of caravan parks within RE1 Public Recreation and RE2 Private Recreation zones and wants to remove any uncertainty or ambiguity about their prohibition in these zones.</li> </ul>
11	<p>Amend the land use table in the RU2 Rural Landscape zone to allow 'centre-based childcare facilities' and 'respite day care centres' to be permitted with consent;</p> <ul style="list-style-type: none"> <li>Amend the land use table for the RU2 Rural Landscape zone to permit these land uses to implement Action 23 of <i>Live Port Stephens</i> to provide better access to essential services in rural areas.</li> </ul>
12	<p>Permit 'temporary events' on Council managed land, schools and places of public worship as exempt development;</p> <ul style="list-style-type: none"> <li>Delete clause 7.17 which permits temporary events on public reserves and public roads only. Add to Schedule 2 Exempt development to allow temporary events on Council owned or managed land, schools and places of public worship as exempt development; and</li> <li>Application of the clause would be subject to being in accord with plans of management, licences, agreements, permits and approvals under other legislation including the <i>Local Government Act 1993</i>, <i>Roads Act 1993</i> or the <i>Crown Lands Act 2016</i>.</li> </ul>

Item	Description
13	<p>Permit 'signage' on sports fields as exempt development;</p> <ul style="list-style-type: none"> <li>Amend Schedule 2 to permit signage on sports fields as exempt development where they are: <ul style="list-style-type: none"> <li>For relevant information about sponsors or teams using the facilities;</li> <li>Not illuminated; and</li> <li>Installed in accordance with AS/NZS 1170.0-2002 and AS/NZS 1170.2-2011.</li> </ul> </li> </ul>

## 2.4 Mapping

There are no maps required for this planning proposal.

## 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal has been prepared following adoption of the *Port Stephens LSPS* and *Live Port Stephens* in 2020, as well as identification of errors, omissions, redundancy of certain clauses through their implementation, need for clarification and consistency between zones.

## 4. STRATEGIC ASSESSMENT

### 4.1 Regional / District

#### Hunter Regional Plan 2036

The amendments proposed in the planning proposal are predominantly minor and administrative in nature. The planning proposal implements and demonstrates consistency with the following directions and actions of the *Hunter Regional Plan 2036*:

*Direction 13: Plan for greater land use compatibility*

*Action 13.3 Amend planning controls that deliver greater certainty of land use*

Relevant amendment/s: Provisions relating to environmental protection works (Item 7), flood mitigation works (Item 8), prohibiting single dwelling houses in the B3 Commercial Core Zone (Item 9), prohibiting caravan parks in residential and business zones (Item 10) will support this action.

*Direction 17: Create healthy built environments through good design*

*Action 17.2 Enhance access to fresh food by promoting initiatives that increase urban food production and access to produce from local farmers.*

Relevant amendment/s: Allowing temporary events on Council land, schools and places of public worship as exempt development (Item 12) will enable markets to be established more readily in urban areas supporting this action.)

*Direction 21: Create a compact settlement*

*Action 21.6 Provide greater housing choice by delivering diverse housing, lot types and sizes ....*

*Action 21.7 Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.*

Relevant amendment/s: Prohibiting single dwelling houses in the B3 Commercial Core Zone (Item 9) will support the development of higher density housing where infrastructure and services are available supporting these actions.

*Direction 22: Promote housing diversity*

*Action 22.2 Encourage housing diversity, including studios and one and two bedroom dwellings, to match forecast changes in household sizes.*

Relevant amendment/s: Prohibiting single dwelling houses in the B3 Commercial Core Zone (Item 9) will support the development of higher density housing and smaller dwellings supporting this action.

*Direction 26: Deliver infrastructure to support growth and communities*

*Action 26.2 Enable the delivery of health facilities ...*

Relevant amendment/s: Allowing 'centres-based childcare centres' and 'respite day care centres' in the RU2 Rural Landscape Zone (Item 11) will support this action.

### Greater Newcastle Metropolitan Plan 2036

The planning proposal implements the following Strategies of the *Greater Newcastle Metropolitan Plan 2036*:

*Strategy 6: Promote tourism, major events and sporting teams on the national and international stage.*

*Action 6.3 Enable major events in strategic centres and other suitable locations along with the development of hotels, event and conference capacity.*

Relevant amendment/s: Permitting temporary events on Council managed land, school sites and places of public worship as exempt development (Item 12) will support this strategy. In addition, allowing signage on sports fields (Item 13) as exempt development will also support this strategy).

*Strategy 11: Create more great public spaces where people come together.*

*Action 11.1 Create and activate public spaces in the strategic centres that are suitable for community events like markets, festivals, commemorations and assemblies.*

Relevant amendment/s: Permitting temporary events on Council managed land, school sites and places of public worship as exempt development (Item 12) will support this strategy).

*Strategy 16: Prioritise the delivery of infill housing opportunities within existing urban areas.*

*Action 16.1 Greater Newcastle councils will focus new housing in existing urban areas, particularly within strategic centres and along urban renewal corridors.*

Relevant amendment/s: Prohibiting single dwelling houses in the B3 Commercial Core Zone (Item 9) will support the development of higher density housing in strategic centres supporting this action.

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 gives effect to the following planning priorities:

- Planning Priority 1 – Support the growth of strategic centres and major employment areas. (Item 9)
- Planning Priority 3 – Support tourism development and attract events. (Item 12)
- Planning Priority 5 – Increase diversity of housing choice. (Item 9)

The planning proposal also implements the following action:

- Action 10.2 – Support the activation of public spaces, including events, public art, small business opportunities, markets, and other temporary events. (Item 12)

Amendment of the aims of the *Port Stephens Local Environmental Plan 2013* removes references to outdated strategies that have been superseded by the LSPS. (Item 1).

The planning proposal is consistent with the Port Stephens LSPS.

### Port Stephens Local Housing Strategy (*Live Port Stephens*)

The planning proposal gives effect to several priorities of *Live Port Stephens*:

- Priority 1.2 – remove barriers to unlock housing supply. (Item 9)
- Priority 1.3 – Increase the proportion of infill housing. (Item 9)
- Priority 2.2 – Provide more affordable housing near jobs. (Item 9)
- Priority 3.1 – Facilitate new housing within existing urban areas. (Item 9)
- Priority 3.2 - Encourage a range of housing types and sizes. (Item 9)

The planning proposal also gives effect to the following actions:

- Action 5 – Consider recommendations in the 'Infill Housing Study' to facilitate infill housing in centres, including considering incentives to encourage selected types of infill. (Item 9)
- Action 15 – Consider the recommendations of the 'Infill Housing Study' and create opportunities for Council to encourage a greater diversity of infill housing around local centres. (Item 9)
- Action 18 – Review local provisions to better plan for lifestyle villages and provide controls to ensure high quality design outcomes and liveable communities are created. (Item 10)
- Action 23 – Review access to essential services in rural areas, such as childcare centres. (Item 11)

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

### Port Stephens Recreational Strategy 2018

The planning proposal gives effect to Objective 7 of the *Port Stephens Recreational Strategy 2018* to achieve well-managed and maintained recreation facilities through



a coordinated and planned approach. Recreation Facility Management Strategic Direction 3 – Utilise external funding sources to manage and upgrade recreation facilities.

Allowing signage on sporting fields as exempt development (Item 13) enables an income from sports organisations' sponsors.

The planning proposal is consistent with the *Port Stephens Recreational Strategy 2018*.

#### **4.3 State environmental planning policies (SEPPs)**

The following SEPPs apply to the planning proposal.

##### SEPP (Coastal Management) 2018

The planning proposal seeks to permit with consent 'environmental protection works' in the B1 Neighbourhood Centre zone and 'childcare centre' and 'respite day care centres' in the RU2 Rural Landscape zone.

Where a development application is lodged for any of these uses within the Coastal Zone then it will need to assess the requirements of the SEPP.

The planning proposal is consistent with the SEPP.

##### SEPP (Education Establishments and Child Care Facilities) 2017

The planning proposal makes 'centres-based childcare centres' permissible with consent in the RU2 Rural Landscape zone. Any development application would have to consider relevant provisions of the SEPP.

The planning proposal is consistent with the SEPP.

##### SEPP (Exempt and Complying Development) 2008

The planning proposal identifies temporary events on Council managed land, schools and places of public worship and signage on sports fields as exempt development separate to the SEPP.

The same requirements for exempt development listed in the SEPP apply to these uses and Council has a robust policy for assessing temporary events and signage on sports field that address the same criteria as the SEPP.

The planning proposal is consistent with the SEPP.

##### SEPP (Infrastructure) 2007

The planning proposal clarifies that flood mitigation works can be carried out in the RE1 Public Recreation zone without consent.

The SEPP enables flood mitigation works, by or on behalf of a public authority, anywhere as permitted without consent.

The planning proposal does not impact on the SEPP.

##### SEPP No.21 – Caravan Parks

The planning proposal prohibits caravan parks in all residential and business zones. This is not at odds with the SEPP, which requires consent for caravan parks and camping grounds. It identifies matters to be addressed in a development application, allows subdivision of long-term sites and permits moveable dwellings (manufactured homes).



Caravan parks are currently prohibited in residential and business zones as innominate uses. The proposed amendment will make it clear that they are prohibited.

Council has planned for the development of caravan parks and manufactured home estates in its RE1 Public Recreation and RE2 Private Recreation zones.

The planning proposal is not inconsistent with the SEPP.

#### SEPP 64 – Advertising and Signage

The planning proposal makes signage on sports fields exempt development, subject to certain criteria including only being for information about sponsors or teams using the facilities as well as meeting relevant Australian Standards of construction.

The SEPP identifies requirements for certain signs and assessment criteria.

The planning proposal is not inconsistent with the SEPP.

#### SEPP 65 – Design Quality of Residential Apartment Buildings

The planning proposal deletes a redundant clause that was to ensure the conversion of serviced apartments to residential flat buildings resulted in good design outcomes.

Quality of design will rely on application of the SEPP and the planning proposal is therefore consistent with the SEPP.

### **4.4 Section 9.1 Ministerial directions**

The following section 9.1 Ministerial directions apply to this planning proposal.

#### 1.1 Business and Industrial Zones

The direction seeks to encourage employment growth in suitable locations, protect business and industrial zones and support the viability of centres.

The planning proposal is consistent with this direction in the following ways:

- it will prohibit single dwelling houses in in the B3 Commercial Core zone. This will support the growth of centres and increase population close to businesses by increasing residential densities in centres; and
- allows temporary events as exempt development on Council managed land, schools and places of public worship. This will enable the establishment of markets in suitable locations, including centres, and attract people to business areas.

The planning proposal is consistent with the direction.

#### Direction 1.2 Rural Zones

This direction seeks to protect the agricultural production value of agricultural lands.

The planning proposal permits 'centre-based childcare centres' and 'respite day care centres' in the RU2 Rural Landscape zone. It does not rezone rural land to another zone and does not increase permissible density on rural land.

It is therefore consistent with the direction.

#### Direction 1.5 Rural Lands

This direction's objectives include:

- protecting the agricultural production of the land;

- facilitating the orderly and economic use and development of rural lands to promote the social, economic and environmental welfare of the State;
- assist the proper management, development and protection of rural lands.

The planning proposal introduces 'centre-based childcare centres' and 'respite day care centres' as permissible uses in the RU2 Rural Landscape zone. These uses will support the rural community and assist in the orderly and economic use of the land by providing services close to rural jobs and homes.

The planning proposal is consistent with the direction.

#### Direction 3.1 Residential Zones

The objectives of this direction include encouraging housing diversity and choice and to make efficient use of existing infrastructure and services.

The planning proposal prohibits single dwelling houses in the B3 Commercial Core zone. This will encourage more dense development and a greater choice of housing type and size close to centres, infrastructure, and services.

The planning proposal is consistent with the direction.

#### Direction 3.2 Caravan Parks and Manufactured Home Estates

The objectives of the direction are:

- a. to provide for a variety of housing types; and
- b. to provide the opportunities for caravan parks and manufactured home estates.

The planning proposal expressly prohibits 'caravan parks' in all residential and business zones. They are currently prohibited in these zones as 'innominate uses', that is, they are not identified as a permissible use and therefore prohibited.

Manufactured home estates are prohibited in Port Stephens through its listing in Schedule 2 of *SEPP 36 – Manufactured Home Estates*.

This is a minor amendment aimed at clarification, not changing the existing prohibition of caravan parks in residential or business zones, and the planning proposal is not inconsistent with the direction.

#### Direction 5.10 Implementation of Regional Plans

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

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The planning proposal will have the following positive social impacts on the community:

- permitting 'centre-based childcare centres' and 'respite day care centres' in the RU2 Rural Landscape zone will bring services closer to rural communities and jobs and reduce the need to travel long distances for support;
- permitting temporary events as exempt development on Council managed land, schools and places of public worship will enable events and markets to

establish close to centres of population. This will result in cultural and social benefits for the population; and

- identifying signage on sporting fields as exempt development will enable sporting clubs to improve facilities and attract sponsorship and improve facilities.

## **5.2 Environmental**

The planning proposal is unlikely to have any significant environmental impacts.

## **5.3 Economic**

The planning proposal will have the following positive economic impacts, including:

- prohibiting single dwelling houses in the B3 Commercial Core zone will encourage higher density residential in those centres and increase the viability of the centres; and
- allowing temporary events on Council managed land, schools and places of public worship as exempt development is likely to have a positive impact in encouraging community events including markets and entertainment events.

## **5.4 Infrastructure**

The proposed changes are unlikely to have any significant impact on the provision or demand for infrastructure.

# **6. CONSULTATION**

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## **6.1 Community**

Council has not nominated an exhibition period. Given the nature of the changes and that the planning proposal is consistent with the criteria for low impact proposals, 14 days is considered an appropriate consultation period.

## **6.2 Agencies**

Given the housekeeping nature of the changes proposed and that State government agencies commented on the LSPS, *Live Port Stephens* and the *Port Stephens Recreation Strategy 2018* it is not considered necessary to specifically consult with any State agencies or organisations.

# **7. TIME FRAME**

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Council has proposed 9 months to complete the planning proposal. This is considered appropriate.

# **8. LOCAL PLAN-MAKING AUTHORITY**

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Port Stephens Council has requested to be the local plan-making authority. Given the nature of the house keeping amendments and that many arise as a result of development of *Port Stephens Local Strategic Planning Statement*, *Live Port Stephens* and *Port Stephens Recreation Strategy 2018* Council should be authorised to be the local plan-making authority.

# **9. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Ministerial directions: 1.1 Business and Industrial Zones; 1.2 Rural Zones; 1.5 Rural Lands; 3.1

Residential Zones; 3.2 Caravan Parks and Manufactured Home Estates; and 5.10 Implementation of Regional Plans are minor or justified.

It is recommended the delegate of the Minister determine that 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. The time frame for completing the Local Environmental Plan is to be 9 months from the date of the Gateway determination.
3. Given the nature of the planning proposal, Council should be the local plan-making authority.



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