



NSW GOVERNMENT
Department of Planning

COPY

Office of the Director-General

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Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Our ref: N09/00093-1
Your ref: PSC 2008-2332

Dear Mr Gesling,

Re: Section 54(4) Notification – Draft Amendment to Port Stephens Local Environmental Plan 2000 – Medowie Hardware

I am writing in response to Council's letter dated 24 June 2009 advising, under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') to rezone Lot 1 DP 249781 Ferodale Road, Medowie from 1(c4) Rural Small Holdings Zone to 3(a) Business Zone, and to remove the reference to the subject site under *Clause 62 – Particular Development Permitted with Consent – Port Stephens Local Environmental Plan 2000*.

The Council may now continue with the preparation of the draft LEP. However, Council is to consider incorporating this draft amendment into its Principal LEP.

I have determined that there is no need for an environmental study to be prepared for this draft LEP. Therefore sections 57 and 61 of the EP&A Act will not apply.

While I have determined that an environmental study is not required, it would be appropriate for any existing studies and supporting material to be brought together for exhibition with the draft LEP.

Consultation with the Department under section 62 of the Act is not required in this instance. However, Council is advised to undertake consultation with Hunter Water Corporation and Department of Environment & Climate Change.

Council should ensure that relevant section 117 Directions are adequately addressed and any necessary approvals or opinions sought prior to exhibition of the draft plan.

You will be aware that an instrument of delegation for my LEP making functions was executed on 16 February 2006. Use of the delegation for a draft LEP is conditional on receipt by Council of a Written Authorisation to Exercise Delegation.

I have now issued an Authorisation, together with guidelines on its use, which is attached. This will enable Council to certify the draft LEP once the amendments and considerations, requested above, are made. This should be done in consultation with the Department's Regional Team.

Please forward a copy of the section 65 certificate, the draft plan and any other information to be publicly exhibited with the draft LEP, to the Regional Office with advice to the Department as required under section 64 of the Act prior to the exhibition of the draft LEP.

Should you have any queries in regard to this matter please contact the Regional Office of the Department.

Yours sincerely


Sam Haddad
Director-General

22/7/2009



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

This is a Written Authorisation to Exercise Delegation ('Authorisation') made under the instrument of delegation executed by the Director General of the Department of Planning ('Director General') on 16 February 2006 ('Delegation').

Subject to the Delegation and the terms and conditions specified in Schedule 1 to this Authorisation, the following functions are delegated to Port Stephens Council ('Council') for the draft local environmental plan the subject of notification by Council to the Director General under section 54(4) of the Environmental Planning and Assessment Act 1979 ('EP&A Act') dated 24 July 2009, being Draft Port Stephens LEP 2000 (Medowie Hardware) ('Draft LEP') to rezone Lot 1 DP 249781 Ferodale Road, Medowie from 1(c4) Rural Small Holdings Zone to 3(a) Business Zone, and to remove the reference to the subject site under *Clause 62 – Particular Development Permitted with Consent – Port Stephens Local Environmental Plan 2000*.

- Section 65(1)
- Section 69(1)

Dated 22nd day of July 2009.

Sam Gabriel Haddad

Sam Gabriel Haddad
DIRECTOR GENERAL
Department of Planning

Schedule 1

The exercise of the function(s) under the Delegation is subject to:

1. the Draft LEP complying with any relevant Ministerial Direction issued pursuant to section 117 of the EP&A Act; and
2. the Draft LEP not being the subject of an unresolved objection by a public authority or body; and
3. the Draft LEP not containing provisions suspending laws pursuant to section 28 of the EP&A Act; and
4. compliance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 entitled, 'LEPs and Council Land - Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council'.



**GUIDANCE IN THE USE OF THE
WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

- The Authorisation attached means that Council is able to exercise the Director General's functions specified on the Authorisation in respect of the nominated draft LEP, and subject to the terms and conditions contained in the Authorisation.
- The Authorisation only applies to, and in respect of, the draft LEP referred to in the Authorisation.
- A copy of the Authorisation should be placed on exhibition with the section 65 certificate and other required material including relevant section 117 directions and the statement required by section 66(1)(b)(iii) of the Act, when exhibiting the draft LEP.
- Where any applicable section 117 direction requires the Director-General to form an opinion or be satisfied as to certain matters, you need to ensure that this is done before exercising functions under the delegation.
- Council is to ensure that all proper care is exercised in undertaking functions pursuant to the delegation as any invalid exercise of delegation will necessarily affect the validity of the resulting LEP. Please note that the delegation may be subject to amendment or revocation at any time (in which case the Council will be notified in writing).
- A copy of the Authorisation should be attached to Council's information when an Opinion is being sought from the Parliamentary Counsel.