

PNC000977

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Please quote file no:
PSC2006-6662

The Regional Director
Hunter and Central Coast Region
NSW Department of Planning and Infrastructure
PO Box 1226
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Attention: Michael Leavey

Re: Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 (your ref: 11/09793-1)

Further to the Department of Planning and Infrastructure's correspondence dated 29 July 2011 regarding the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010, a planning proposal is submitted for your consideration.

The planning proposal seeks to include a number of land uses as permissible with consent in the E2 Environmental Conservation Zone, including flood mitigation works, roads, sewer systems and water supply systems.

The Land Use Table for the E2 Zone in the draft LEP that was adopted by Council and submitted to the Department of Planning and Infrastructure for finalisation included public utility undertakings, public utility infrastructure and telecommunication networks as permissible with consent. However, these land uses were omitted in the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 made by the Minister and published on 10 December 2010. It is understood that these land uses were omitted by virtue of the Standard Instrument Order and the SEPP (Infrastructure).

As these land uses are only permissible under certain conditions in the SEPP, Council is seeking to include the closest equivalent land uses which are allowable under the Standard Instrument Order to those originally adopted. The inclusion of roads, water supply systems, sewer systems and flood mitigation works in the E2 Zone Land Use Tables will provide clarity about the permissibility of these land uses and facilitate the development of the adjacent land which is zoned R1 General Residential. In addition, their inclusion will ensure that the LEP more closely reflects on the content and intent of Council's resolution in relation to these land uses.

Please contact Sarah Dasey on (02) 4980 0462 or via email sarah.dasey@portstephens.nsw.gov.au should you wish to discuss this matter.

Yours faithfully

Peter Marler
Strategic Planning Coordinator
Port Stephens Council

8 November 2011



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Planning Proposal –

Inclusion of additional land uses in the land use table for the E2 Environmental Conservation Zone, Kings Hill (North Raymond Terrace)

Part 1 - Objectives or Intended Outcomes

The purpose of the proposal is amend the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 (“the LEP”) by including following additional land uses in the Land Use Table entry for E2 Environmental Conservation Zone as permitted with consent:

- Flood mitigation works
- Roads
- Sewer systems
- Water supply systems

The Land Use Table for the E2 Zone in the draft Local Environmental Plan that was adopted by Council and submitted to the Department of Planning for finalisation included public utility undertakings, public utility infrastructure and telecommunication networks as permitted with consent.

However, the Council adopted land uses (public utility undertakings, public utility infrastructure and telecommunication networks) were omitted from the Land Use Table for E2 Environmental Conservation Zone in the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 made by the Minister and published on 10 December 2010.

It is understood that the public utility undertakings, public utility infrastructure and telecommunication networks land uses are not to be included in Standard Instrument Land Use tables by virtue of Standard Instrument Order No. 5.

Council is seeking to include the closest equivalent land uses to those originally adopted by Council in the Land Use Table of the LEP, in order to provide clarity to the development industry and the wider community about the permissibility of these land uses, and to facilitate the development of the adjacent land which is zoned R1 General Residential. Effectively the land uses sought for inclusion are a subset of those adopted by Council.

Council understands that a number of these uses are addressed in the State Environmental Planning Policy (Infrastructure), however it is considered by Council that the SEPP provisions are conditional and open to interpretation, and do not provide the clarity that would result from the inclusion of the above land uses in the Land Use Table of the LEP.

Part 2 - Explanation of Provisions

It is proposed to amend the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 by:

Amending the Land Use Table by including the following additional uses in Zone E2 Environmental Conservation as “Permitted with Consent”:

flood mitigation works, roads, water supply systems, sewer systems.

The effect of this amendment is to increase the number of land uses which are permitted with consent in the E2 Environmental Conservation Zone.

When it resolved on 25 May 2010 to forward the draft LEP to the Minister for finalisation, Council included these land uses as permitted with consent in the E2 Environmental Conservation Zone.

The land uses being sought for inclusion in the LEP are subsets of those adopted by Council and they represent the closest equivalent land uses which are allowable in a Land Use Table under Standard Instrument Order (Direction) No. 5.

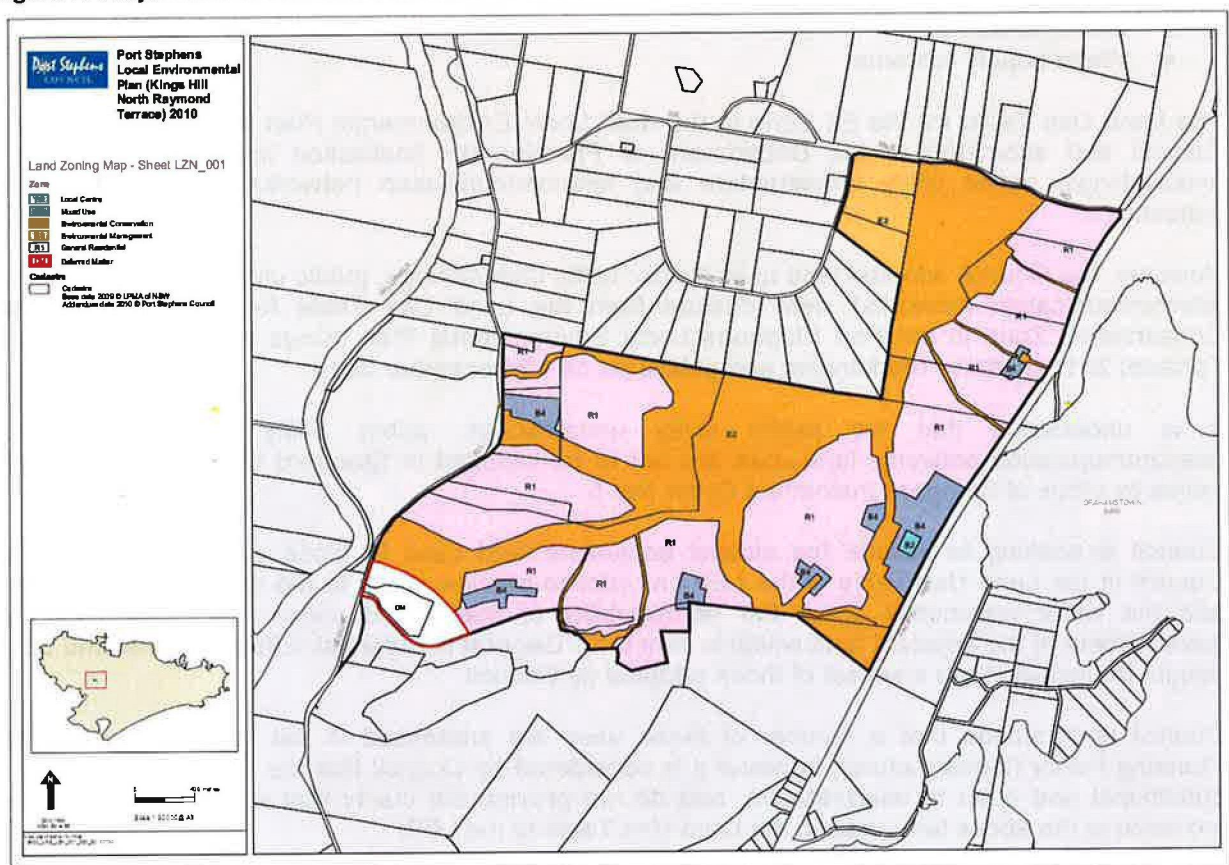
Council report, supplementary report and resolution are at Attachment 1, 2 and 3 respectively. A location and zoning map is at Attachment 4.

Location

The land affected by the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 is shown in the map at Figure 1.

Kings Hill is located just to the north of Raymond Terrace in the Port Stephens Local Government Area. The Pacific Highway is adjacent to the east of Kings Hill, and New Line Road is adjacent to the west.

Figure 1: Subject land shown outlined with a thick black line



Site description

It is proposed to develop Kings Hill as a residential urban release area, accompanied by small scale retail and services centres to meet the day to day needs of residents. The development area forms a "J" shape around a ridge which runs north south and which, along with a number of riparian corridors, is zoned E2 Environmental Conservation, as can be seen in the map at Figure 1. Kings Hill is estimated to have around 4,500 dwellings or 11,700 residents at completion. The development of Kings Hill will take some 25 years, at an average development rate of 180 dwellings per year.

It can be seen that corridors of land zoned E2 Environmental Conservation separate the areas of land zoned R1 General Residential. These corridors are generally riparian zones containing ephemeral streams. In order to provide connectivity between the areas of land zoned R1 General

Residential, and to provide reticulated services to these residential areas it is necessary to cross the land zoned E2 Environmental Conservation in a limited number of locations. Accordingly, Council is seeking to ensure clarity in the permissibility of roads and services on the land zoned E2 Environmental Conservation through this proposed amendment to the LEP.

Figure 2: Aerial photograph



Current zoning

Kings Hill is zoned R1 General Residential, B2 Local Centre, B4 Mixed Use, E2 Environmental Conservation and E3 Environmental Management.

Part 3 - Justification

Section A - Need for the planning proposal.

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

The planning proposal is the result of a strategic study or report. The Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 is an outcome of the Kings Hill Local Environmental Study and extensive consultation with agencies, landowners and the community. The draft Port Stephens Planning Strategy seeks to ensure a sufficient supply of a diverse range of housing in the Local Government Area (LGA). The Lower Hunter Regional Strategy projects 5300 additional infill dwellings in Port Stephens by 2031. The development of the land zoned for urban purposes at Kings Hill for housing will assist in achieving this projection, and this planning proposal seeks to facilitate timely and efficient residential development.

The permissibility of certain land uses in the E2 Environmental Conservation zone needs to be clearer in order to reduce uncertainty and risk faced by land developers.

It can be seen that corridors of land zoned E2 Environmental Conservation separate the areas of land zoned R1 General Residential. These corridors are generally riparian zones containing ephemeral streams. In order to provide connectivity between the areas of land zoned R1 General Residential, and to provide reticulated services to these residential areas it is necessary to cross the land zoned E2 Environmental Conservation in a limited number of locations. Accordingly, Council is seeking to ensure clarity in the permissibility of privately constructed roads and services on the land zoned E2 Environmental Conservation, through this proposed amendment to the LEP.

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

The Planning Proposal is the most efficient way of providing clarity in relation to the permissibility of certain land uses in the E2 Environmental Conservation Zone.

The purpose of the planning proposal is to ensure that the intent of Council's resolution to forward the draft LEP for finalisation is implemented.

An alternative course of action would be to rezone the "fingers" of E2 Environmental Conservation land to another land use, such as R1 General Residential, so that the connecting roads and services can be provided. However, this option will take longer to implement and the development industry requires certainty now in order to undertake their detailed site planning and other investigations with confidence.

Council is not confident that the State Environmental Planning Policy (Infrastructure) provides sufficient clarity as far as the permissibility of privately constructed flood mitigation works, roads, water supply systems, and sewer systems in the E2 Environmental Conservation Zone is concerned.

As a result of this assessment, it is considered that Option 1 provides the best and most timely outcome, and should be progressed as a planning proposal.

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)?

The proposal is consistent with the Lower Hunter Regional Strategy (LHRS) which encourages residential development and increased housing choice.

Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022) which states that Council should provide for a range of lot sizes and housing types to respond to demographic needs and affordability, and that Council should provide a diverse range of fit-for-purpose, quality recreational assets which are safe and highly accessible – balanced with the ability to maintain these on a financially sustainable basis.

The draft Port Stephens Planning Strategy seeks to encourage a sufficient supply of a diverse range of housing in the Local Government Area (LGA).

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

SEPP (Affordable Rental Housing) 2009

The proposal facilitates residential development on land to which the SEPP applies, and accordingly has the potential to increase the supply of affordable housing.

SEPP (Exempt and Complying Development Codes) 2008

The proposal facilitates development on land to which the Exempt and Complying Development Code may be applied.

SEPP (Rural Lands) 2008

The proposal does not affect rural or agricultural land.

SEPP (Infrastructure)

The proposal is consistent with this SEPP. However, the proposal seeks to include certain uses in the LEP land use table which are conditionally permissible under the SEPP. The inclusion of these land uses in the Land Use Table of the LEP will provide greater flexibility than is provided under the conditional permissibility under the SEPP (Infrastructure)

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Not applicable.

SEPP (Major Development) 2005

Not applicable.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal is consistent with this SEPP.

SEPP (Housing for Seniors and People with a Disability) 2004

The proposal facilitates development on land upon which housing for seniors and people with a disability may be developed.

SEPP 71 (Coastal Protection)

The land is not affected by SEPP 71.

SEPP 65 – Design Quality of Residential Development

SEPP 65 applies to the site.

SEPP. 62 – Sustainable Aquaculture

Not applicable.

SEPP 64 – Advertising and Signage

The proposal is consistent with this SEPP.

SEPP 55 – Remediation of Land

There is no known contamination on the land.

SEPP 44 – Koala Habitat Protection

In relation to SEPP 44 Koala Habitat Protection, an ecological assessment by Ecobiological (2009) concluded that while the master plan for the overall Kings Hill development removes some areas of preferred and supplementary habitat for the Koala, it does leave habitat that can be used by this species for dispersal corridors and feeding areas. Roads and services crossing the E2 Environmental Conservation corridors were included in the master plan review.

Notwithstanding the low population density of this species, the combined impacts of a reduction in Koala habitat and a restriction of movement may mean a significant impact upon the ability of this species to use the subject area. The Port Stephens Koala Comprehensive Plan of Management implements SEPP 44, and permits the provision of offsets for the removal of vegetation. This matter is currently the subject of discussions with DECCW in relation to biodiversity offsets and other measures.

The requirements of the Port Stephens Koala Comprehensive Plan of Management would be considered in the development of road or service corridor crossings of the E2 Environmental Conservation land

SEPP 15 – Rural Land-Sharing Communities

Not applicable.

SEPP 50 – Canal Estates

Not applicable.

SEPP 53 – Metropolitan Residential Development

Not applicable.

SEPP 36 – Manufactured Home Estates

Not applicable.

SEPP 21 – Caravan Parks

Not applicable.

SEPP 33 – Hazardous and Offensive Development

Not applicable.

SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)

Not applicable.

SEPP 30 – Intensive Agriculture

Not applicable.

SEPP 22 – Shops and Commercial Premises

No applicable.

SEPP 14 – Coastal Wetlands

A SEPP 14 Wetland (No 803) is located in the southwest of Kings Hill. It is not proposed to change the zoning of this wetland

SEPP 9 – Group Homes

The proposal facilitates development on land upon which group homes may be developed.

SEPP 6 – Number of Storeys in a Building

The proposal is consistent with this SEPP.

SEPP 4 – Development without Consent and Miscellaneous Complying Development

Not applicable.

SEPP 1 – Development Standards

Clause 1.9 of the Port Stephens Local Environmental Plan (Kings Hills, North Raymond Terrace) 2010 repeals SEPP 1 so that it no longer applies to the land.

Clause 4.6 – Exceptions to development standards provides for a degree of flexibility in the application of certain planning controls.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

1.1 Business and Industrial Zones

The objectives of this direction are to:

- encourage employment growth in suitable locations,
- protect employment land in business and industrial zones, and
- support the viability of identified strategic centres.

This proposal does not reduce business or industrial zones.

1.2 Rural Zones

The objective of this direction is essentially to protect the agricultural production value of rural land.

This proposal does not affect agricultural land.

1.3 Mining, Petroleum Production and Extractive Industries

The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This proposal does not affect extractive resources.

1.4 Oyster Aquaculture

This proposal does not affect oyster aquaculture areas.

1.5 Rural Lands

The objectives of this direction are to protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.

This proposal does not affect agricultural or rural land.

2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

The proposal does affect environmental sensitive lands. Environmental offsets are being negotiated with the Office of Environmental and Heritage regarding the impacts of development on the lands at Kings Hill.

2.2 Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy.

The land is not within the coastal zone.

2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

A search of the Australian Heritage Database, the Aboriginal Heritage Information Management system (AHIMS), the NSW Department of Planning Heritage Database and the Port Stephens Local Environmental Plan indicate that the site does not contain known areas of heritage significance.

2.4 Recreation Vehicle Areas

The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.

It is not proposed to enable a recreational vehicle area to be developed.

3.1 Residential Zones

The objectives of this Direction are:

- To encourage a variety and choice of housing types to provide for existing and future housing needs
- To make an efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services
- To minimise the impact of residential development on the environment and resource lands.

The proposal facilitates the development of housing on land zoned for urban purposes.

3.2 Caravan Parks and Manufactured Home Estates

The objectives of this direction are:

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

Caravan Parks are a not permissible land use under the existing zoning of lands at Kings Hill.

It is considered that the proposal is consistent with this Direction.

3.3 Home Occupations

The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.

The proposal does not affect this matter.

3.4 Integrating Land Use and Transport

The objective of this Direction is to ensure that development:

- Improves access to housing, jobs and services by walking, cycling and public transport;
- Increases the choice of available transport and reducing dependence on cars;
- Reduces travel demand including the number of trips generated by development and the distances travelled, especially by car;
- Supports the efficient and viable operation of public transport services; and
- Provides for the efficient movement of freight.

The proposal facilitates connectivity of adjacent parcels of land zoned for urban purposes. It will facilitate the provision of efficient bus routes and cycleway/pedestrian networks.

3.5 Development Near Licensed Aerodromes

The objectives of this direction are:

- to ensure the effective and safe operation of aerodromes, and
- to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and
- to ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

The planning proposal will not create an obstruction to flying aircraft. The subject land is not affected by the ANEF 2025 (Department of Defence 10 August 2011)

3.6 Shooting Ranges

The objectives of this direction are:

- to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range,
- to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land,
- to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.

The site does not affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.

4.1 Acid Sulphate Soils

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.

One riparian corridor in the north west of Kings Hill is Category 1 – works below 2m below natural ground surface, and a wetland in the southwest of Kings Hill is Category 2 – works below ground surface. Council will require appropriate measures to be taken at the development application stage and appropriate provisions are included in the LEP in relation to acid sulphate soils.

4.2 Mine Subsidence and Unstable Land

The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.

The land is unaffected by mine subsidence.

4.3 Flood Prone Land

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 Floodplain Development Manual 2005
- To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

Two riparian corridors in the north west of Kings Hill and a wetland in the southwest of Kings Hill are identified as flood prone on the Port Stephens Council GIS. This is an indication of flooding from the Williams River. Local catchment modelling is being undertaken, based on potential development patterns.

4.4 Planning for Bushfire Protection

The objectives of this Direction are to protect life, property and the environment from bushfire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas and to encourage sound management of bushfire prone areas.

Kings Hill contains bushfire prone areas. These areas will change as urban areas are developed. The new urban areas will be developed consistent with Planning for Bushfire Protection.

5.1 Implementation of Regional Strategies

The proposal is consistent with the Lower Hunter Regional Strategy.

5.2 Sydney Drinking Water Catchments

Not applicable.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

Not applicable.

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

The objectives for managing commercial and retail development along the Pacific Highway are:

- to protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;
- to prevent inappropriate development fronting the highway
- to protect public expenditure invested in the Pacific Highway,
- to protect and improve highway safety and highway efficiency,
- to provide for the food, vehicle service and rest needs of travellers on the highway, and
- to reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

Where this Direction applies:

This Direction applies to those council areas on the North Coast that the Pacific Highway traverses, being those council areas between Port Stephens Shire Council and Tweed Shire Council, inclusive.

The site is adjacent to the Pacific Highway, but this issue is not relevant to the nature of this Planning Proposal.

5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)

Not applicable.

5.6 Second Sydney Airport: Badgerys Creek

Not applicable.

6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

The proposal is consistent with this direction.

6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- to facilitate the provision of public services and facilities by reserving land for public purposes, and
- to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

The proposal is consistent with this direction.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

The proposal is consistent with this direction.

Section C - Environmental, social and economic impact.

7. 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?

The proposal may impact on critical habitat or threatened species, populations or ecological communities, or their habitats. However, ecological studies will be required for any development such as roads or service corridors that affect the E2 Environmental Conservation lands. Previous ecological studies have been based on a master plan for Kings Hill which included roads and services crossing the E2 corridors, and the rezoning and offset negotiations with the Office of Environmental Heritage have proceeded on this basis.

The land is not located within the LHRS green corridor or any areas identified by the Lower Hunter Conservation Plan as being of conservation significance.

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

No significant effects.

10. How has the planning proposal adequately addressed any social and economic effects?

Yes.

The nearest community land is adjacent to the subject site and offers a range of recreational experiences.

The social impacts of the proposal are:

- More rapid delivery of housing.

The economic effects are:

- Potential employment creation associated with the construction and on going occupation of any dwelling on the site
- Infrastructure efficiencies achieved as a result of "connected" development.

The environmental impacts of the proposal are:

- The environmental impacts associated with the construction and ongoing operation of any road or service corridor on the site.

These negative impacts of the proposal can be reduced by an environmental assessment at the subdivision stage. The environmental impacts of the Kings Hill master plan, which included roads and services crossing the (then proposed) E2 Environmental Conservation corridors, was considered at the rezoning stage, and rezoning proceeded on this basis.

Section D - State and Commonwealth interests.

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

Water, sewer, electricity and telecommunication services can be provided to Kings Hill.

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

Consultation with relevant authorities was undertaken prior to finalisation of the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010. The Office of Environment and Heritage has been consulted in relation to roads and services crossing the E2 Environmental Conservation Corridors, and have indicated their agreement on the basis of these areas not being included in the ecological offsets to be provided as a result of the development of the land.

Part 4 – Community Consultation

The community was consulted on the draft LEP prior to Council forwarding the draft plan to the Minister for finalisation. This planning proposal seeks to amend the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 to more closely reflect Council's intent when adopting the draft LEP and to increase clarity in relation to the circumstances under which certain land uses are permitted with consent in the E2 Environmental Conservation zone.

Accordingly, it is considered that this Planning Proposal does not require additional community consultation.

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The planning of the new town is based around 6 mixed use villages with more intensive housing, surrounded by low intensity largely detached housing. As a result, King Hill aims to be more supportive of public transport, be more self sufficient and have a greater sense of community than conventional suburban development.

In mid 2002 Council resolved to prepare a draft LEP for Kings Hill. An Environmental Management Strategy (EMS) prepared by the proponent was submitted to Council in 2005. The EMS identifies the constraints and opportunities of the site and a structure plan identifying how the site can be developed in a way that is responsive to constraints and topography and facilitate public transport, walking and cycling.

A Local Environmental Study (LES) (based on Council's review of the EMS including a third party review commissioned by Council) and a draft LEP were completed in 2006. Following Department of Planning endorsement in February 2007, the draft LEP accompanied by the EMS and the LES was publicly exhibited in May and June 2007.

Outstanding issues

Since the exhibition, considerable work has been undertaken to resolve issues raised during the exhibition. Of these, the most significant include; transport infrastructure; biodiversity; and, military aircraft noise.

Transport Infrastructure

The proponent(s) and the RTA have yet to finally agree on the details and staging of an interchange to Kings Hill from the Pacific Highway. However, a solution has been negotiated to enable the RTA to agree to a "satisfactory agreements" clause in the LEP which will enable development to receive consent if the RTA is satisfied with the agreements reached at that time. This has lead to the RTA withdrawing their objection.

A number of other clauses in the LEP address; flood free access from the site; the closure of existing accesses on the Pacific Highway as development proceeds; and, internal connections within the site including from Newline Road to the Pacific Highway. Conditions of subdivision approval, Section 94 and a potential Voluntary Planning Agreement (VPA) will address upgrades to Council transport infrastructure. This includes cycleway and pedestrian links, including those to Raymond Terrace.

Biodiversity impacts

Following objections raised by DECCW, the CMA, Hunter Bird Observers and Dr Max Maddock, the previous ecological investigations were reviewed and supplementary ecological assessment was undertaken in 2009. This assessment identified a range of ecological issues, including those which may require a species impact statement at the development application stage, and potential offsets. It is likely that the initial offsets will be met on site; and that over the 25 year development of Kings Hill, additional off site offsets will be secured. A VPA(s) or similar agreement between the proponent(s) and DECCW would formalise the offset arrangements, and is likely to include a voluntary conservation agreement (VCA) secured against the title of the

conservation offset lands. DECCW has orally advised that these matters will be formally addressed at the development application stage. The draft LEP places an E2 Environmental Conservation zone over the bulk of the conservation lands and an E3 Environmental Management zone over 3 parcels of land on Winston Road. DECCW have verbally indicated their willingness to withdraw their objection to the draft LEP because they are of the view that the ecological issues can be resolved in the manner discussed above.

A clause is included in the draft LEP to require a Biodiversity Plan to be developed and associated measures to be agreed prior to subdivision consent. This clause aims to ensure that any biodiversity impacts of development are managed to achieve and "maintain or improve outcome". These measures could include offsets outside of the entire Kings Hill site.

This approach seeks to ensure a holistic approach to biodiversity management across the entire Kings Hill site.

In addition to an offset agreement with DECCW for the biodiversity impacts of development on urban zoned land, negotiations will be necessary with the Hunter Central Coast Rivers Catchment Management Authority (CMA) for additional offsets for native vegetation removal within the environmental zoned land. This would be necessary in such cases such as when a road is required to cross a narrow environmentally zoned riparian corridor to link two residential areas. To achieve an equivalent environmental outcome and be administratively more efficient, a single agreement should be reached for offsets related to urban zoned land and for roads and utilities on environmentally zoned land. Consequently, this report recommends that representations be made to the Chair of the CMA and the Minister for the Environment to achieve a single agreement which includes vegetation removal for public roads and utilities.

A major issue is the long term ownership and management of the conservation lands. These lands are not of sufficient conservation significance to warrant becoming part of the national park estate. Whilst having conservation value and could be used as a place for low intensity informal recreation, the cost to Council of managing the lands exceeds the benefit. Consequently, it is not desirable for Council to own the lands without an adequate ongoing funding source. It may be that an additional "special rate" applying to Kings Hill could be an option. Other options are continuing private ownership or ownership by a community trust/association. For the latter to be successful, this would require an ongoing funding source in perpetuity for land management. The proponents are not pursuing community title as an option, and their proposal for community trust management (that may only provide funding surety for 10-15 years) with eventual transfer of the Reserve to National Parks and Wildlife Service or some other government agency. As a result, private ownership is the favoured option for the conservation lands, provided the lands are also subject to a voluntary conservation agreement.

The biodiversity impacts of the draft LEP are described further under "Environmental Implications" below.

Aircraft Noise Impacts

A North Raymond Terrace Working Party consisting of Department of Planning (DoP), Department of Defence (DoD) and Council officers was established to consider the noise impacts of the Joint Strike Fighter (JSF) on Kings Hill. Two expert reviews were undertaken by DoP including the Airbiz report which was reported to Council in June 2009. DoD promulgated new Australian Noise Exposure Forecast 2025 (ANEF) in October 2009. ANEF 2025 affects around one third of the eastern side of Kings Hill between the ANEF 20 and 25 contours. Housing and other noise sensitive land uses are classified as "conditionally acceptable" by Australian Standard 2021 between ANEF 20-25 provided measures are taken to reduce interior noise levels to those specified in the standard. The draft LEP contains a clause requiring development to comply with AS2021 unless Council deems otherwise in the public interest. Compliance with AS2021 will affect housing affordability because of the cost of the additional noise attenuation measures.

The south-western corner of Kings Hill appears to be also subject to high LA Max, and DoD are undertaking further detailed work to more accurately determine the noise environment in this location, which may lead to the Minister for Planning adjusting the zoning map as reflected in Recommendation No. 5.

Winston Road

The draft LEP includes three lots adjacent to the intersection of Winston and Six Mile Roads. The landowners propose "rural conservation" lots on this land. The exhibited draft LEP showed these lots are zone E2 environmental conservation, in common with the core conservation lands on Kings Hill. The 2009 ecological assessment identified that these lots are of some environmental significance, and that provided a maximum of 10 per cent of the land was cleared, some 6-10 large rural conservation lots could exist. Accordingly, the recommended draft LEP proposes an E3 Environmental Management zone and a minimum lot size of 5 ha, consistent with the ecologist's recommendations. The extent of clearing of native vegetation would be managed by a foreshadowed Development Control Plan and the provisions of the Native Vegetation Act.

Odour from Bedminster Waste Transfer Station

Advice has been received from DECCW (who licence the operation of the Bedminster station) stating no objection to another draft LEP to rezone land for additional urban development between the Kings Hill land that is the subject of this report and the waste transfer station. DECCW's advice recognises and is dependent upon a private agreement between the waste station owner and the rezoning proponent (EWT/Newline Resources who also own land affected by the Kings Hill draft LEP) that stipulates that EWT or any other future land owner has recourse to a contractual agreement if the waste transfer station owner breaches licence conditions concerning odour. A clause has been included in the draft LEP to safeguard the interests of future landowners from this potential affectation by requiring consideration by Council of any affectation at the development

application stage. Legal advice was obtained on the matter and the clause is proposed on the basis of Council's duty of care to future landowners / residents and to the SITA operation. The licence does not in itself cover Council's legal responsibilities.

The land affected by the LEP clause is mainly proposed open space and a smaller area of proposed residential land.

Additional lands

In their submissions to the exhibition of the draft LEP, Hunterland and EWT have requested the inclusion of additional lands to the south of exhibited draft LEP boundary (Newline Resources) and to the west of Newline Road (Newline Resources and Hunter Land) in the draft LEP. It is considered that the inclusion of these lands requires further planning assessment and would also contribute to the quantum of changes to the exhibited draft LEP that could trigger a re-exhibition of the draft LEP. These requests are outside the area subject to Council's 2002 resolution to prepare the draft LEP. They will be the subject of a future report/s to Council.

FINANCIAL/RESOURCE IMPLICATIONS

There are major costs to all stakeholders in developing Kings Hill and certainly potentially major implications for Council in delivering and maintaining infrastructure. The development of a new town will require a range of community, recreational, transport and environmental infrastructure. The majority of this infrastructure will be provided by developers, either directly, or indirectly via developer contributions. Most of this infrastructure will become Council owned requiring ongoing maintenance and eventual replacement costs and responsibilities. It is important that new revenue streams resulting from Kings Hill, such as rates, are sufficient to Council's additional ongoing costs. An additional "special rate" applying to Kings Hill may be an option if more conventional Council funding requires supplementation, although the implementation of this may be problematic.

The potential financial implications of the long term ownership and management of the conservation lands were discussed earlier in this Report. The draft LEP does not stipulate private, community or council ownership options of this land and will be further investigated and resolved during the implementation of the draft Plan.

The preferred approach is to retain the conservation lands under private ownership with Voluntary Planning and Voluntary Conservation Agreements.

Council has developed standards for community and recreation facilities, which are reflected in Council's Section 94 Plan. These standards are a balance between community need and Council's ability to financially maintain. Should the developers propose variations to the standards, it is important that the variations are tested against the standards to ensure that all community infrastructure needs are still able to be met, and that Council can afford the variation over the long term.

Local facilities and services, such as a community facility, will be provided at Kings Hill, and district level facilities and services, such as a swimming pool and a library, will be provided by upgrading existing facilities at Lakeside and Raymond Terrace respectively. The management of community facilities will need to be considered in terms of the appropriateness of Council managing a specific facility relative to leasing to a community organisation.

An infrastructure scoping paper has been produced as a preparatory step towards a comprehensive approach to infrastructure provision, and has been placed in the Councillors work room. A summary of the infrastructure scoping paper is at **Attachment 6**. In addition, Council officers have undertaken a corporate risk assessment of infrastructure required as a result of the development of Kings Hill and have identified actions to reduce high risks to more manageable levels.

Kings Hill will also require substantial planning resources for implementation and management of future development. The development of a “foreshadowed” LEP to deal with unresolved detailed implementation matters such as those discussed elsewhere in this report, a Section 94 Plan, negotiations for a Voluntary Planning Agreement, and a Development Control Plan are all matters which will consume substantial planning resources. Issues associated with the infrastructure needed by a new community will require considerable attention from Council officers. Means of providing additional resources are being negotiated with the landowners / proponents.

LEGAL, POLICY AND RISK IMPLICATIONS

The draft LEP is consistent with the Community Settlement and Infrastructure Strategy and the Lower Hunter Regional Strategy.

The draft LEP is being made under the provisions of the Environmental Planning and Assessment Act (EPA Act). In making the Plan, Council must consider any submissions made during the exhibition of the LEP. A summary of submissions is provided in **Attachment 2** (with full submissions provided in the Councillors' Room for viewing).

Consistency of the draft LEP with State Government Section 117 directions is outlined at **Attachments 3**.

The recommended draft LEP has a number of differences to the draft LEP exhibited in 2007 (**Attachment 4**). The main differences, (see **Attachment 5**), have arisen as a result of submissions, advice from Government agencies, changes in the Standard LEP instrument and additional planning investigations. The EPA Act and Regulations are not specific on the extent to which a draft LEP can change from the exhibited draft without triggering a requirement to re-exhibit the LEP.

The intent and much of the detail of the recommended draft LEP is consistent with the exhibited draft. Any changes have been kept to the minimum necessary to permit the land to be rezoned for urban and conservation purposes, while ensuring

that the resolution of any outstanding issues are not compromised. It is concluded that the draft LEP does not require re-exhibition.

It is proposed to submit a "foreshadowed LEP" to Council within the next 12 months to address the outstanding issues.

The draft LEP contains a number of "satisfactory arrangements" clauses. These clauses seek to ensure that the interests of Council and certain Government agencies (such as the RTA) are maintained concerning a number of matters which are unable to be finalised at this stage. The success of "satisfactory arrangements" clauses is very dependent on the ability of the relevant authority to ensure that the desired outcome is being achieved prior to confirming they are "satisfied". As a result, there is a higher level of risk involved relative to resolving the outstanding matters prior to finalisation of the LEP. This risk needs to be balanced against the delay in finalising the draft LEP while matters are being resolved, with impacts on the supply of land for housing and the landowners' ability to do more detailed planning (which in part will resolve some of the outstanding matters).

The section of the EPA Act dealing with the making of LEPs has recently been amended. Existing draft LEPs are required to be converted to "planning proposals" under the new legislation by 31 July 2010. A submission has been made to the DoP to convert the Kings Hill LEP into a planning proposal. It is understood that this will allow the draft LEP to continue towards finalisation and the existing status of the LEP (i.e. it is at the finalisation stage) will be retained.

Council is preparing an LGA wide standard LEP. The draft Kings Hill LEP, which is in standard LEP format, has been prepared to maximise its consistency with the draft LGA wide LEP.

Council sought legal advice in 2008 regarding the consideration and incorporation of aircraft noise provisions into the draft LEP for Kings Hill. The legal advice states that AS2021 contains well recognised standards to be applied to development affected by noise from aircraft, and that "there is no warrant for applying a standard other than AS 2021-2000 and for using the 20 ANEF as the criteria for application of the standard". The clause in the draft LEP is consistent with this advice.

Odour

Legal advice has been provided concerning DECCW's advice on odour concerning a draft LEP to rezone land for residential development around the Bedminster Waste Transfer Station by the former owners of the plant who also own some 17 hectares of land within the Kings Hill draft LEP (see Odour from Bedminster Waste Transfer Station under Background section of this report). The advice is that, notwithstanding the operational licensee conditions of the Bedminster plant, and the existence of a restrictive covenant burdening Lots 1 and 2, given the history of odour complaints from the plant, Council should be cautious, and have a responsibility to prepare a draft LEP that provides an appropriate regulation of development on the subject land.

A 2007 review of Odour and Noise Impacts of the Bedminster plant by (Air Noise Environment Pty Ltd) concluded that "a 400 metre buffer is not considered appropriate. A larger buffer seems warranted based on the available data and observations." On this basis a 1000 metre buffer from the Bedminster plant was recommended to Council in December 2008. Council resolved that a buffer (if required) would be determined through the rezoning process for that draft LEP. Based on DECCW's advice, the recommended draft LEP that is the subject of this report, contains a clause requiring Council as a consent authority to take into account various matters on land potentially affected by odour (as per such a map in the draft LEP) when determining development applications for odour sensitive land uses on this land.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Kings Hill will increase the supply of land for housing near Raymond Terrace. It will provide greater housing choice. The size (4500 dwellings) and topography of Kings Hill will also provide housing choice within the development area. Kings Hill is being planned to provide a range of housing densities, with the most intense development being located around the town and neighbourhood centres. The draft LEP contains both minimum and maximum lot sizes for detached housing to encourage residential densities that reflect the proximity to the town or neighbourhood centre, and to facilitate a more efficient use of land.

Retail Centres Structure

The town centre and neighbourhood centres are planned as mixed use centres with both residential and economic activities. It is hoped this will encourage a greater range of activity and community life than is found in conventional suburban development.

Local services and retail will be provided at Kings Hill. However, higher order services and retail needs will be located at Raymond Terrace. This will support the regional centre role of Raymond Terrace.

The exhibited draft LEP specified a maximum of 2200 square metres of retail floor space in the town centre and a number of smaller local centres of between 200-650 square metres. These maximums were based on retail analysis by Hirst Consulting in 2004, who stated that a larger town centre of 5,500 square metres may have a negative impact on Raymond Terrace. Council is undertaking a more comprehensive study of all retail and commercial floor space in the LGA. This study will provide a more current and comprehensive analysis than Hirst, and the result will be available in the next few months. Consequently the recommended draft LEP is taking a prudent approach of retaining maximum retail floor space as the exhibited LEP, with the option of amending the maximum figure should the new LGA study recommend a higher figure.

Increased patronage of the Raymond Terrace regional centre from Kings Hill will support more businesses and services and create employment.

Public Transport

It will be important for all Kings Hill residents to be able to access Raymond Terrace. The early provision of public transport services and a cycleway link to Raymond Terrace is of critical importance to mitigate a high dependence on motor car usage and to ensure that people can get to the services they need. Whilst the provision of public transport infrastructure and services is the responsibility of the State Government, Council can directly influence the feasibility and successful operation of public transport by determining the location of urban development and the subsequent street layout. The Kings Hill structure plan provides mixed use centres connected by a street network that supports a direct bus route, walking and cycling.

Aircraft Noise

A requirement for urban developments to meet AS 2021 (aircraft noise) will increase construction costs and will mainly occur where this development is within the 20-25 ANEF contours. Locating schools and other noise sensitive uses within the ANEF 20-25 contours may lead to a reduction in the quality of the learning environment and the amenity of outdoor spaces. Alternatively these land uses may be located outside of the 20-25 ANEF contour to avoid these impacts.

Economic Benefit

The development of Kings Hill will provide a stimulus to the local construction industry over the 25 years of development.

Council will receive additional revenue through land rates and user fees and charges. It will need to spend additional funds on providing services to Kings Hill residents and businesses, as well as on maintaining new assets at Kings Hill.

Kings Hill, and the growth of Medowie, will need nearby employment to reduce commute times and transport costs. The implementation of the Port Stephens Economic Development Strategy is very important, and in particular that increased employment occurs at Raymond Terrace, Heatherbrae, Tomago and around the airport/airbase.

The town centre and neighbourhood centres will provide some employment for residents. Kings Hill is being planned to support a high level of small and home based businesses, however this will only partly address the need for additional employment.

Environmental Management

Kings Hill contains areas of environmental significance. These have been identified in ecological assessments, and are mentioned in a number of public submissions. Generally, the areas of environmental significance are located on the higher lands, along riparian corridors, and include SEPP 14 wetlands. The eastern section of Kings Hill drains into the Irawang wetlands, a SEPP14 wetland.

Whilst Kings Hill is not within the "green corridor" shown in the Lower Hunter Regional Strategy, it is identified in the Lower Hunter Conservation Plan as including an indicative wildlife corridor. DECCW mapping shows the indicative wildlife corridor passing from Tomago through the eastern and northern urban areas of Raymond Terrace, across the Irawang wetlands, through Kings Hill, and heading north to the Wallaroo National Park and beyond. This corridor is impeded by the urban areas of Raymond Terrace, and wildlife would also need to need to cross the dual carriageway of the Pacific Highway, just to the south of Kings Hill. The development of Kings Hill will impede this corridor further, despite the provision of wildlife corridors in the draft LEP, from the core of the conservation area on Kings Hill to the Irawang wetlands. The development of Kings Hill will also remove some of the habitat for a number of threatened species, particularly in the south eastern and south western corners.

For these reasons, the most recent ecological report identifies that a species impact statement would be necessary for development proposals which affect the habitat of the Koala, Grey Crowned Babbler and Phascogale. These matters are the subject of discussions between the proponents and DECCW in relation to an offset package (see "biodiversity impacts"). DECCW advises that additional ecological investigations and offsets will be required at the development application stage.

All SEPP14 wetlands, much of the higher lands, and the riparian corridors, are included in an environmental zone in the draft LEP. The DCP for Kings Hill will contain controls to ensure that the quantity and quality of urban runoff does not have a significant impact on the riparian corridors and wetlands.

CONSULTATION

Consultation with the following public authorities has been undertaken under with Section 62 of the EPA Act:

- Hunter Water Corporation
- Roads and Traffic Authority
- Department of Primary Industries – Agriculture
- Department of Mineral Resources
- Department of Defence
- NSW Fisheries
- Department of Environment, Climate Change and Water
- Department of Natural Resources
- Department of Planning
- Coastal Council
- NSW Fire Brigades
- Rural Fire Service
- Newcastle Airport Limited
- Department of Housing
- Department of Education and Training

The draft LEP was exhibited in accordance with Section 66 from 29th March to 10th May 2007 and re exhibited from 11th May to 12th June 2007 due to a notification

problem with the initial exhibition. Details of the exhibition were published on Council's website and in the Port Stephens Examiner newspaper in accordance with the Regulations. Two information sessions were held during the exhibition period on 19th April 2007 and 28th April 2007 at Council's administration building. Some 15 persons and 8 persons attended the information sessions respectively.

The draft LEP, explanatory information, the Local Environmental Study and the Environmental Management Strategy were available at the exhibition. The documents were available for viewing at Council's Administration Building, Tomaree and Raymond Terrace Libraries.

The exhibition in 2007 resulted in 23 submissions. A summary of these submissions and those received in April/ May 2010 are in **Attachment 2**. A copy of these submissions is provided in the Councillors workroom.

Two meetings have been held with all landowners since the public exhibition – most recently on 19th April 2010. The major issues raised by landowners in their recent submissions (provided in full in the Councillors workroom) include:

- The importance of finalising the environmental zones, rather than treating them as a "deferred matter" in the LEP.
- Support for an E2 zone over the most of the conservation area, with an E3 zone over the three lots fronting Winston Road.
- The importance of co-ordinating infrastructure across landowners and precincts, and Council's key role in this process.
- Resolution of the Pacific Highway access, and its relationship to the timing of development on the western side of Kings Hill.
- Flood free access being required to the 5% AEP level only, and the importance of a temporary east west route to achieve this in the interim until a permanent road links the Pacific Highway to Newline Road.
- The quantum of retail floor space.
- The importance of the early preparation of a DCP, infrastructure plans and a Section 94 Plan.
- There is no need for an "odour buffer area".
- Flexibility in the route of east west and inner Precinct road links until detailed investigations have been done.
- Permissibility of dual occupancy development

OPTIONS

Council has the following options to the recommendation:

- 1) Defer finalisation of the draft LEP until outstanding matters have been resolved -the consequent changes to the draft LEP would probably trigger a re-exhibition and would be reported to Council in approximately 6-12 months.
- 2) Resolve to re-exhibit the draft LEP - re-exhibition would involve another report to Council in approximately 2-3 months, and the outstanding matters are likely to still remain unresolved at that time, resulting in no real gain other than additional public exposure and opportunity to comment on the recommended draft LEP at this stage.

ATTACHMENTS

- 1) Draft Port Stephens Local Environmental Plan 2010 – Kings Hill **(under separate cover)**
- 2) Summary of submissions received during the exhibition period, and landowners' submissions since 19 April 2010
- 3) Response to Section 117 Directions and State Environmental Planning Policies
- 4) Draft Local Environmental Plan – Kings Hill 2007 publicly exhibited
- 5) Table identifying main changes to the draft LEP 2010 to that publicly exhibited during 2007
- 6) Summary of the Infrastructure Scoping Paper

COUNCILLORS' ROOM

- 1) Kings Hill Local Environmental Study 2007
- 2) Kings Hill Infrastructure Scoping Paper 2010
- 3) Submissions received during public exhibition of Port Stephens Draft Local Environmental Plan – Kings Hill 2007.
- 4) Submissions received from landowners since the landowners meeting of 19 April 2010

TABLED DOCUMENTS

Nil.

Supplementary Information



TO: All Councillors & Executive Team

FROM: Trevor Allen - Integrated Planning Manager

DATE: 25th May 2010

RE: Supplementary information for Committee Meeting

FILE No: PSC2006-0191

ITEM No: 2

REPORT TITLE: Draft Local Environmental Plan – Kings Hill 2010

PURPOSE

To inform Council of changes to the recommendations of the above report following Council officers' consideration of representations from landowners seeking changes to certain clauses and standards in the Draft Local Environmental Plan – Kings Hill 2010.

BACKGROUND

The Draft LEP has undergone extensive review and consultation over the last 6 months covering a diverse and complex range of issues. It was finalised for reporting to Council on the 17th May 2010. A copy of the final instrument was not made available to landowners until it was available on Council's website and after Councillors had received the subject report.

Two submissions have been received - one prepared by JWPlanning on behalf of four land owners, submitted on 21st May 2010, and one prepared by a land owner of one of the lots proposed to be rezoned to E3 Environmental Management, submitted on 24th May 2010.

ISSUES

The landowners raised issues relating to clauses in draft LEP, as follows:

1. Clause 7.2 - Development within an area of potential odour
2. Clause 4.1A (6) - Minimum lot size for E2 land

3. Clause 4.1A (7) - Minimum lot size for E3 land
4. Clause 7.7 Road links
5. Clause 7.3 Flood Prone Lands
6. Urban Release Area map and Part 6 - Removal of E3 land from Urban Release Area map
7. Clause 7.12 Biodiversity Conservation Plan

Consideration of these issues (and recommendation in bold) in the above order, is as follows:

1. The proposed clause 7.2 (dealing with potential odour) was seen as superfluous given the existence of a DECCW licence for the operation of a waste plant and a restrictive covenant on the land. There are some complex technical and legal issues involved, including a question of Council's legal exposure to action by purchasers of rezoned land. Given the complexity of the issues **it is recommended that Council defer finalisation of this clause of the draft LEP pending the outcome of further discussions with the Department of Planning, DECCW and landowners.**
2. & 3. Clauses 4.1A (6) and (7) specify a minimum lot size of 40ha (E2) and 5ha (E3) respectively. There is concern that an inability to vary these minimum lot sizes may not be practical in some circumstances and may inhibit the ability of landowners to create privately owned conservation land. In the case of the land proposed to be zoned E3, a 3 ha minimum lot size is requested. **It is recommended that these clauses be amended to permit variation in the minimum lot size if the variation is consistent with a conservation strategy for the land.**
4. There was concern with earlier versions of Clause 7.7 dealing with road links within Kings Hill. **The recommended draft LEP addresses these concerns.**
5. There was concern that the requirement for flood free access to land on Kings Hill up to 5% AEP events was excessive. **It is recommended that the 5% AEP standard be deleted from the draft LEP, to allow each case to be decided on its merits at the development consent stage.**
6. A submission from a landowner of land on Winston Road sought the exclusion of the proposed E3 zoned land from the "Urban Release Area" map. Inclusion in the urban release area requires satisfactory arrangements to be in place for the provision of State and local infrastructure, as well as a Development control Plan, before development consent can be granted. Despite their future low intensity of development, the Winston Road E3 land is an integral part of the Kings Hill LEP and will benefit from the development of Kings Hill. Residents will use Kings Hill infrastructure, particularly after the closure of Six Mile Road at the Pacific Highway, as required by the RTA. **No change is recommended.**
7. There is concern that the requirement for a Biodiversity Plan may duplicate the provisions of the Threatened Species Act and other legislation. There is also concern that the term "biodiversity" may be confused with other concepts such as "biocertification". Additionally, some landowners believe there should be an ability to have several plans applying to different parts of Kings Hill, rather than a single Plan. This clause is needed because a Biodiversity/Conservation Plan will

provide a consistent strategy and guide for conservation outcomes across Kings Hill. It is also necessary because of the last minute decision by DECCW to not require a voluntary planning agreement for conservation measures with landowners, prior to the gazettal of the LEP. **It is recommended that the clause be amended by substituting terms such as "conservation" and "ecological" as appropriate to avoid confusion in terms.**

AMENDED RECOMMENDATION IS THAT COUNCIL (changes to original are highlighted)

- 1) Adopt the draft Local Environmental Plan - Kings Hill 2010 (Attachment 1 to the Council report) **with the amendments shown in Attachment 1 to this Supplementary Report** for the purpose of forwarding to Minister for Planning for finalisation and gazettal, pursuant to the Environmental Planning and Assessment Act 1979;
- 2) **Designate Clause 7.2 and the Potential odour affectation map be a deferred matter pursuant to the Environmental Planning and Assessment Act, in order to permit further discussions between Council, the Department of Planning, the Department of Environment, Climate Change and Water and landowners, and delegate the subsequent finalisation of this clause to the General Manager;**
- 3) Note the preparation and submission of the Kings Hill Local Environmental Study 2007 with the draft Local Environmental Plan 2007 Kings Hill to the Department of Planning under Section 64 of the Environmental Planning and Assessment Act and that the Local Environmental Study was publicly exhibited with the draft Plan;
- 4) Note that the zoning map for the recommended draft Plan may be amended by the Minister for Planning to reflect further advice requested by Council from the Department of Defence regarding aircraft noise impacts;
- 5) Note that a submission has been made to the Department of Planning to convert the draft Plan to a "Planning Proposal" under changes to the Environmental Planning and Assessment Act to ensure smooth transition of the draft Plan to the new provisions of the Act;
- 6) Note that Council will be requested to consider another draft Plan (Planning Proposal) which will address a range of detailed outstanding matters in relation to Kings Hill within the next 12 months;
- 7) Note the advice from the Department of Environment, Climate Change and Water (DECCW) in relation to the conservation of lands of environmental significance and in relation to biodiversity offsets being determined at the development application stage;
- 8) **Request the Department of Environment, Climate Change and Water to work closely with Council and the landowners in order to finalise a Conservation Plan and associated implementation measures referred to in the draft LEP in cooperation with Council, as a matter of urgency;**
- 9) Resolve to prepare a draft Development Control Plan and a draft Section 94 Contributions Plan for Kings Hill, pursuant to the Environmental Planning and Assessment Act.

Note: Previous Recommendation No. 8 deleted.

ITEM NO. 2

FILE NO: PSC 2006-0191

DRAFT LOCAL ENVIRONMENTAL PLAN - KINGS HILL 2010

REPORT OF: TREVOR ALLEN - MANAGER, INTEGRATED PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the draft Local Environmental Plan - Kings Hill 2010 (**Attachment 1**) for the purpose of forwarding to Minister for Planning for finalisation and gazettal, pursuant to the Environmental Planning and Assessment Act 1979;
- 2) Note the preparation and submission of the Kings Hill Local Environmental Study 2007 with the draft Local Environmental Plan 2007 Kings Hill to the Department of Planning under Section 64 of the Environmental Planning and Assessment Act and that the Local Environmental Study was publicly exhibited with the draft Plan;
- 3) Note that the zoning map for the recommended draft Plan may be amended by the Minister for Planning to reflect further advice requested by Council from the Department of Defence regarding aircraft noise impacts;
- 4) Note that a submission has been made to the Department of Planning to convert the draft Plan to a "Planning Proposal" under changes to the Environmental Planning and Assessment Act to ensure smooth transition of the draft Plan to the new provisions of the Act;
- 5) Note that Council will be requested to consider another draft Plan (Planning Proposal) which will address a range of detailed outstanding matters in relation to Kings Hill within the next 12 months;
- 6) Note the advice from the Department of Environment, Climate Change and Water (DECCW) in relation to the conservation of lands of environmental significance and in relation to biodiversity offsets being determined at the development application stage;
- 7) Request the Minister for Environment to finalise the Biodiversity Plan and associated implementation measures referred to in the draft LEP in co-operation with Council, as a matter of urgency.
- 8) Request the Minister for Environment and the Chair of the Hunter Central Coast Rivers Catchment Management Authority to include offsets which may be required under the Native Vegetation Act for infrastructure which cross non urban zoned land in the Kings Hill biodiversity offsets package, to ensure a single offsets approval, and improve the efficiency of land use planning and development and government administration;
- 9) Resolve to prepare a draft Development Control Plan and a draft Section 94 Contributions Plan for Kings Hill, pursuant to the Environmental Planning and Assessment Act.

COUNCIL COMMITTEE MEETING - 25 MAY 2010
RECOMMENDATION:

	Councillor Geoff Dingle Councillor John Nell	That Council: 1) Adopt the draft Local Environmental Plan - Kings Hill 2010 (Attachment 1 to the Council report) with the amendments shown in Attachment 1 to this Supplementary Report for the purpose of forwarding to Minister for Planning for finalisation and gazettal, pursuant to the Environmental Planning and Assessment Act 1979; 2) Designate Clause 7.2 and the Potential odour affectation map be a deferred matter pursuant to the Environmental Planning and Assessment Act, in order to permit further discussions between Council, the Department of Planning, the Department of Environment, Climate Change and Water and landowners, and delegate the subsequent finalisation of this clause to the General Manager; 3) Note the preparation and submission of the Kings Hill Local Environmental Study 2007 with the draft Local Environmental Plan 2007 Kings Hill to the Department of Planning under Section 64 of the Environmental Planning and Assessment Act and that the Local Environmental Study was publicly exhibited with the draft Plan; 4) Note that the zoning map for the recommended draft Plan may be amended by the Minister for Planning to reflect further advice requested by Council from the Department of Defence regarding aircraft noise impacts; 5) Note that a submission has been made to the Department of Planning to convert the draft Plan to a "Planning Proposal" under changes to the Environmental Planning and Assessment Act to ensure smooth
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MINUTES ORDINARY COUNCIL – 25 MAY 2010

		transition of the draft Plan to the new provisions of the Act; 6) Note that Council will be requested to consider another draft Plan (Planning Proposal) which will address a range of detailed outstanding matters in relation to Kings Hill within the next 12 months; 7) Note the advice from the Department of Environment, Climate Change and Water (DECCW) in relation to the conservation of lands of environmental significance and in relation to biodiversity offsets being determined at the development application stage; 8) Request the Department of Environment, Climate Change and Water to work closely with Council and the landowners in order to finalise a Conservation Plan or Plans and associated implementation measures referred to in the draft LEP in cooperation with Council, as a matter of urgency; 9) Resolve to prepare a draft Development Control Plan and a draft Section 94 Contributions Plan for Kings Hill, pursuant to the Environmental Planning and Assessment Act – the draft LEP be amended accordingly.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

MATTER ARISING

	Councillor Bob Westbury Councillor Ken Jordan	That the Draft Local Environmental Plan for the Moxeys land and adjacent ten lots be forwarded to the NSW Department of Planning requesting that the Minister
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MINUTES ORDINARY COUNCIL – 25 MAY 2010

		approve the re-zoning.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Cr Frank Ward.

ORDINARY COUNCIL MEETING - 25 MAY 2010

141	Councillor John Nell Councillor Peter Kafer	It was resolved that the recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

MATTER ARISING

142	Councillor John Nell Councillor Peter Kafer	It was resolved that the matter arising be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

Port Stephens
Local Environmental Plan (Kings Hill North Raymond Terrace) 2010

Land Zoning Map - Sheet LZN_001

Zone

- Local Centre
- Mixed Use
- Environmental Conservation
- Environmental Management
- General Residential
- Rural
- Defense & Military

Catchments

- Catchment
- State Only SEDV © IMAA of NSW
- Adopted October 2010 © Port Stephens Council

The map displays various land zones across a geographical area. Key features include:

- Local Centre Zone (Orange):** Located in the upper right quadrant.
- Mixed Use Zone (Yellow):** Located in the lower right quadrant.
- Environmental Conservation Zone (Green):** Located along the western boundary.
- Environmental Management Zone (Light Green):** Located in the central and eastern parts.
- General Residential Zone (Pink):** Widely distributed throughout the map.
- Rural Zone (Blue):** Located in the southern part.
- Defense & Military Zone (Red):** Located in the southwest corner.

A scale bar indicates distances up to 100m. A north arrow points upwards. An inset map shows the location of the study area within the Port Stephens Council jurisdiction.



**Planning &
Infrastructure**

Contact: Trent Wink
Phone: (02) 4904 2716
Fax: (02) 4904 2701
Email: Trent.Wink@planning.nsw.gov.au

Our ref: 11/09793-1

Mr Peter Gesling
General Manager
Port Stephens Council
P.O Box 42
RAYMOND TERRACE NSW 2324

Attention: Bruce Petersen

Dear Mr Gesling

Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010

I refer to Council's letter of 21 June 2011 requesting that the Minister amends the Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 on behalf of Council.

As you may be aware, there were a number of drafting changes made to the draft LEP in order to comply with the Standard Instrument Order. Generally, where a certain type of development was permitted by a State Environmental Planning Policy (SEPP), this land use was required to be removed from the LEP land use tables to avoid unnecessary duplication.

As per previous advice from the Department, if Council wishes to review the land use table or undertake any other miscellaneous amendments, it will be necessary for Council to prepare a Planning Proposal, as this is not a role for the Minister or the Department.

In the circumstances, the Department is willing to consider Council's request to reinsert "roads" as a permissible land use in the E2 Environmental Conservation zone or alternatively amend the zoning map to provide connections between the residential release areas. However, it will not be possible to reinsert "public utility undertakings", "public utility infrastructure" and "telecommunication networks", as the Standard Instrument Order (Direction No.5) nominates the types of development that can be included in the land use tables. The Infrastructure SEPP permits roads, water reticulation systems and stormwater management systems to be carried out by or on behalf of a public authority without consent on any land. Private sewerage treatment plants are only permitted with consent on land in a prescribed zone, which does not include land zoned E2 Environmental Conservation. If Council needs to consider uses such as private sewerage treatment plants, the Department would be happy to work with Council to determine how such uses would most appropriately be addressed.

If you require any clarification of the above, please contact Mr Trent Wink at the Department's Newcastle Office on 4904 2716.

Yours sincerely

Michael Leavey
**Regional Director
Hunter & Central Coast Region**

29/7/11

Hunter & Central Coast Region Level 2, 26 Honeysuckle Drive, Newcastle PO Box 1226 NEWCASTLE 2300
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