

Tag I – Planning Proposals to be included in the draft LEP s.59 Assessments

PP_2012_PORTS_007_00 – Pacific Dunes, Medowie

PROPOSAL

The planning proposal aims to rezone developable land to R2 Low Density Residential and R3 Medium Density Residential and environmental significant land to E2 Environmental conservation. The majority of this land is currently zoned 6(c) Special Recreation and the LEP and DCP identify where residential and tourism developments are permitted with consent. The Village Centre Precinct was not rezoned for residential purposes by Amendment 19 to the Port Stephens LEP 2000, which was made in June 2005. However, tourist facilities are permitted with consent in the 6(c) Special Recreation zone in accordance with Council's DCP.

The Village Centre Precinct has been realigned to provide a larger setback from the Tilligerry State Conservation Area and renamed as the Portmarnock & Links Precincts. A golf practice facility is proposed to the south of the Portmarnock Precinct and adjoining the Tilligerry State Conservation Area. This planning proposal will permit residential development in the Portmarnock, Links and Golf & Country Club Precincts. The golf practice facility is already permissible with consent.

It is estimated that the planning proposal will permit an additional 101 residential allotments. This figure does not take into consideration that the existing Village Centre Precinct (3.21ha) which could hypothetically be developed into a tourism precinct at a density of 1 per 150sm, which is significant higher than the proposed residential precincts.

In summary, the planning proposal makes the following specific amendments:-

- Rezone 'Hillside Precinct (2)' from 1(c4) Rural Small Holdings to R2 Low Density Residential. It will have a minimum lot size of 700sm and a maximum height of 9m.
- Rezone 'Lakes Precinct' from 6(c) Special Recreation to R2 Low Density Residential. It will have a minimum lot size of 450sm and a maximum height of 9m.
- Rezone 'Links Precinct' from 6(c) Special Recreation to R2 Low Density Residential. It will have a minimum lot size of 600sm and a maximum height of 9m.
- Rezone 'Portmarnock Precinct' from 6(c) Special Recreation to R2 Low Density Residential. It will have a minimum lot size of 450sm and a maximum height of 9m.
- Rezone 'Golf and Country Club Precinct' from 6(c) Special Recreation to R3 Medium Density Residential. It will have a minimum lot size of 200sm and a maximum height of 9m.
- Rezone 4.7ha of environmentally significant land from 6(c) Special Recreation to E2 Environmental Conservation. This will add to the 11.24ha of land already zoned E2 Environmental Conservation adjoining the Tilligerry State Conservation Area.

It is noted that the draft comprehensive LEP converts the zoning of the land within the existing 'Hillside Precinct (1)' & the Fairway Precinct from 1(c4) Rural Small Holdings to R2 Low Density Residential. The Hillside Precinct (1)' will retain a minimum lot size of 900sm & the 'Fairway Precinct' will retain a minimum lot size of 600sm to be consistent with the current LEP (refer to clause 54A).

GATEWAY DETERMINATION

On 10 October 2012 the delegate of the Minister of Planning and Infrastructure, determined that an amendment to the Port Stephens LEP 2000 or draft LEP 2012 should proceed.

TIME FRAME

The Gateway Determination requires completion of the planning proposal by 16 May 2014 (18 months).

AGENCY CONSULTATION

Consultation was undertaken with the following public authorities as required by the Gateway determination under section 56(2)(d) of the EP&A Act:

Hunter Water Corporation (HWC) – No Objection. Capacity constraints will need to be addressed by the developer prior to connection being permitted.

NSW Rural Fire Service (RFS) – No Objection. Future development will need to comply with the Planning for Bushfire Protection Guidelines.

Department of Defence – No Objection. The site is located outside the ANEF contour for RAAF Base Williamtown and the Salt Ash Weapons range. However, Defence advises it will not be responsible for any future liabilities in relation to military aircraft noise.

Office of Environment and Heritage (OEH) – Does not support the rezoning and raises the following concerns:-

- The Portmarnock Precinct including the golf practice facility should provide an adequate buffer to the Tilligerry State Conservation Area.
- OEH has identified a number of deficiencies in regards to the assessment of impacts on threatened species listed under the TSC Act. An assessment of whether any impacts have been adequately mitigated and/or offset has not been undertaken.
- The planning proposal will impact of Preferred Koala Habitat and does not conform to the Comprehensive Koala Plan of Management (CKPoM) performance criteria.
- The implementation, management and on-going compliance of the commitments in the Vegetation and Fauna Management Plan should be confirmed by Port Stephens Council.

The Department supports the rezoning without additional flora and fauna investigations or biodiversity offsets for the following reasons:-

- The NSW National Parks and Wildlife Services undertook a land swap with the Port Stephens Golf and Country Club in 2001. The land swap involved the dedication of Moffats Swamp to National Parks and the rezoning of 11.24ha of private land environmental protection to provide a buffer between the residential development and Moffats Swamp. The land given to the Port Stephens Golf and Country Club had previously been sand mined and is now proposed to be developed into the Portmarnock and Links Precincts. OEH's request to provide a buffer on land previously swapped is contrary to previous negotiations.
- The planning proposal rezones 4.7ha of environmentally significant land from 6(c) Special Recreation to E2 Environmental Conservation. This will add to the 11.24ha of land already zoned E2 Environmental Conservation adjoining Moffats Swamp and the Tilligerry State Conservation Area.
- The proponent will address OEH's concerns about impacts on threatened species through the development assessment process. OEH acknowledges that any outstanding biodiversity matter could be potentially dealt with post gazettal. OEH may have a statutory role in the assessment of potential development impacts on threatened species if the consent authority determines that the development is likely to significantly affect a threatened species, population, or ecological community, or its habitat.

- The flora and fauna investigations determined that the vegetation to be cleared is not Preferred Koala Habitat and Council advises that there are discrepancies in the CKPoM mapping. Also, the area mapped as Preferred Koala Habitat is located partly within the Village Precinct, which can already be cleared under the existing LEP and DCP. A detailed assessment of SEPP 44 is provided below.

PUBLIC PARTICIPATION

The planning proposal was exhibited for 14 days from the 21 February to 7 March 2013 in accordance with the Gateway Determination. Eleven submissions were received during the exhibition period. Concerns were raised about the loss of Koala habitat, drainage impacts, provision of a golf practice range and requesting a commitment from the proponent to complete the development of the clubhouse prior to the release of new residential allotments. Council has adequately addressed the issues raised.

PUBLIC HEARING

The Gateway Determination did not require a public hearing to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act.

CHANGES MADE TO THE PLANNING PROPOSAL AFTER EXHIBITION

The final planning proposal submitted to the Department was updated by Council to reflect consultation undertaken. No changes were made to the objectives or explanation of provision of the plan after the exhibition.

CONSISTENCY WITH STATE POLICIES AND S.117 DIRECTIONS

The planning proposal is considered consistent with applicable State Environmental Planning Policies (SEPPs), however discussion of the following SEPPs is required:

SEPP 44 Koala Habitat Protection

The Gateway determination required Council to address clause 15(b) of SEPP 44, which requires councils to identify areas of potential and core koala habitat. SEPP44 is implemented in the Port Stephens LGA through the Port Stephens Comprehensive Koala Plan of Management (CKPoM).

The rezoning will result in the removal of an area of Preferred Koala Habitat and does not conform to the CKPoM performance criteria for rezonings. Council has resolved to support the rezoning based on the following:-

- Eco Logical has undertaken a detailed assessment addressing the CKPoM and has prepared a Vegetation and Fauna Management Plan to mitigate both direct and indirect impacts. It includes actions to improve the condition of the remaining vegetation and control measures to reduce known Koala threats. Eco Logical concludes that *"on balance the proposal is an attempt to achieve an ecological sensitive approach, both for Koala and other flora and fauna, to development on the site."*
- The CKPoM Koala mapping is subject to some inaccuracies. Council advises that the area mapped as Preferred Koala Habitat covers an area previously sand mined which was revegetated approximately 15 years ago. It does not contain any Koala Browse trees and is therefore not considered Preferred Koala Habitat. Also, Eco Logical undertook surveys for koala scats, spotlighting surveys and reviewed Koala sighting records, which further confirmed no signs of Koalas in this locality.
- It should also be noted that the area mapped as Preferred Koala Habitat is located partly within the Village Precinct, which can already be cleared under the existing LEP and DCP.
- A total of 6.92ha of Preferred Koala Habitat and Preferred Habitat Buffer over the marginal land will be zone E2 Environmental Protection.

- The planning proposal rezones 4.7ha of environmentally significant land from 6(c) Special Recreation to E2 Environmental Conservation. This will add to the 11.24ha of land already zoned E2 Environmental Conservation adjoining the Tilligerry State Conservation Area.

SEPP 55 Remediation of Land

The Gateway determination required Council to demonstrate that the planning proposal satisfies the requirements of SEPP 55. Coffey Environments Australia undertook a preliminary contamination assessment and Council is satisfied that the land is suitable for residential development provided that the recommendations are implemented.

The planning proposal is considered consistent with applicable Ministers Section 117 Directions, with the exception of Direction 1.2 Rural Zones, Direction 2.1 Environmental Protection Zones and Direction 4.1 Acid Sulfate Soils.

S117 Direction 1.2 Rural Zones

The planning proposal rezones land from 1(c4) Rural Small Holdings to R2 Low Density Residential, where it is proposed or has already been subdivided into residential allotments ('Hillside Precinct (1) & (2)'). There will be no loss of productive agricultural land.

It is recommended that the Director General approves the inconsistency with this Direction as of minor significance.

The Standard Instrument LEP also converts the existing 1(c2,c3,c4 & c5) Rural Small Holding zones in Medowie to R5 Large Lot Residential. The Director General has already approved this inconsistency as part of the Gateway determination.

S117 Direction 2.1 Environmental Protection Zones

The planning proposal is inconsistent with this Direction as it does not include provisions that fully facilitate the protection and conservation of all environmentally sensitive areas. The planning proposal rezones approximately 2.3 ha of land identified as moderate ecological constraint, and 0.5 ha of high ecological constraint land to R2 Low Density Residential.

Importantly, the planning proposal rezones the majority of the environmentally significant land (4.7ha) from 6(c) Special Recreation to E2 Environmental Conservation. This will add to the 11.24ha of land already zoned E2 Environmental Conservation adjoining the Tilligerry State Conservation Area. In addition, Eco Logical has also prepared a Vegetation and Fauna Management Plan to mitigate both direct and indirect development impacts.

It is recommended that the Director General approves the inconsistency with this Direction as of minor significance.

S117 Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as the planning proposal proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (Class 3, 4 and 5) on the Acid Sulfate Soils Planning Maps. The Director-General approved this minor inconsistency with this Direction as part of the Gateway Determination dated 10 October 2012.

S117 Direction 4.3 Flood Prone Land

The Gateway determination required Council to finalise its flooding assessment and ensure the proposed residential zone is not within a flood prone area. The planning proposal is considered consistent with this Gateway condition and S117Direction. The planning proposal alters the existing development footprint and is not seeking an extensive expansion of developable land. The Flood Impact Assessment concludes that the development and necessary filling will only result in localised increases in flood levels which can be minimised through the drainage design for future development (inclusion of on-site detention structures and source controls). No existing development will become flood affected and new development can be controlled with an appropriate Flood Planning Level.

S117 Direction 5.1 Implementation of Regional Strategies

The planning proposal is consistent with this Direction. The subject site is identified in the Lower Hunter Regional Strategy (LHRS) as an 'existing urban area' of Medowie and the Strategy encourages infill development in existing urban areas.

The subject site adjoins the Watagan to Stockton Green Corridor. Lands within the Corridor are to be managed for conservation purposes, and it is proposed to rezone part of the vegetated area bordering the Corridor to environmental protection.