

Pacific Dunes, Medowie

Proposal Title : **Pacific Dunes, Medowie**

Proposal Summary : **The proposal seeks to enable additional residential development at Pacific Dunes Estate Medowie by rezoning land from:**

- **6c Special Recreation Zone to 2a Residential (and change the minimum lot size from 600 to 450m2 and 200m2)**
- **6c Special Recreation Zone to 7a Environmental Protection Zone**
- **1c(4) Rural Small Holdings to 2a Residential (and change the minimum lot size from 900 to 720m2)**
- **1 c(5) Rural Small Holdings to 2a Residential (and change the minimum lot size from 2000 to 720m2)**

PP Number : **PP_2012_PORTS_007_00**

Dop File No :

12/08686

Proposal Details

Date Planning : **23-Aug-2012**

LGA covered :

Port Stephens

Proposal Received :

Region : **Hunter**

RPA :

Port Stephens Council

State Electorate : **PORT STEPHENS**

Section of the Act :

55 - Planning Proposal

LEP Type : **Spot Rezoning**

Location Details

Street : **Championship Drive**

Suburb : **Medowie**

City :

Postcode : **2318**

Land Parcel : **Part Lot 98 DP 280007, Lot 7 DP 270438, Lot 10 DP 270438, Part Lot 9 DP 270438, Part of Lot 11 DP 1079392, Lot 11 DP 1105086 and Lot 14 DP 1079392**

DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

Contact Email : **dylan.meade@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Matthew Borsato**

Contact Number : **0249800247**

Contact Email : **Matthew.Borsato@portstephens.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	101	No. of Dwellings (where relevant) :	101
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**
If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**
If Yes, comment :

Supporting notes

Internal Supporting Notes : The subject site was previously subject to Amendment 19 to the Port Stephens LEP 2000, which was made in June 2005. This plan enabled residential subdivision of the 'Fairway' and 'Hillside' precincts through insertion of Clause 54A, and zoned the precincts to 6c Special Recreation along with the rest of the golf course. The current planning proposal aims to allow decreased lot sizes for the Fairway and Hillside precincts, and to rezone the 'Portmarnock', 'Links' and 'Golf & Country Club' precincts from 6c Special Recreation to 2a Residential in order to permit residential development.

'Tourist Facilities' are permitted with consent in the 6c Special Recreation zone. Section 'C7 Medowie - Pacific Dunes Estate' of the Port Stephens DCP identifies tourist villas or serviced apartments as appropriate development for the area corresponding to the proposed 'Portmarnock' and 'Golf & Country Club' precincts.

As all precincts except 'Links' allow residential or intensive tourist development (shown on Figure 2 of the planning proposal), the proponent argues that the current planning proposal is therefore only a modification of the existing urban development footprint. The planning proposal continues that inconsistencies with some SEPPs and section 117 directions (SEPP 44 and S.117 2.1, 4.1, 4.3) are justified as development is already permitted under the provisions of the Port Stephens LEP 2000 and DCP. This is not the view taken in this assessment. Areas not subject to Clause 54A and zoned 6c Special Recreation ('Portmarnock', 'Links' and 'Golf & Country Club' precincts) are considered to be zoned for recreation and not residential purposes, regardless of provisions Council has inserted in the DCP.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives explains that the proposal intends to:**

- increase the availability and mix of housing,
- increase the residential population of the estate and the town of Medowie, and
- provide on-going protection of environmentally sensitive land.

The statement of objectives is supported.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions states that the objectives or intended outcomes are to be achieved through amendments to the Zoning Map and Clause 54A of Port Stephens LEP 2000. The amendments will reflect the proposed changes to the zone and minimum lot size provisions.**

The proposal also indicates that depending on timing, the proposed zone and minimum lot size changes may be achieved through an amendment to the Minimum Lot Size and Land Use Zone Maps of Port Stephens LEP 2013.

The explanation of provisions is supported.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

2.1 Environment Protection Zones

* May need the Director General's agreement

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

e) List any other matters that need to be considered :

The southern portion of the subject site borders land zoned 7c Environment Protection "C" (Water Catchment) Zone. This zone provides for the management of surface and ground water catchments by Hunter Water Corporation (HWC). It is considered appropriate for Council to consult with the HWC.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

The planning proposal indicates that further information is required to satisfy the requirements of SEPP 55 Remediation of Land. Completion of a preliminary contamination assessment before exhibition is supported.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council proposes to exhibit the planning proposal for 28 days. Council does not indicate if it considers the planning proposal to be of low-impact or not.**

As the planning proposal is consistent with the strategic planning framework and other criteria of a low-impact proposal, a 14 day exhibition period is considered adequate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **July 2013**

Comments in relation
to Principal LEP :

A Gateway Determination for the principal LEP was issued on 10 July 2012, with 12 month timeframe for completion.

The planning proposal intends to amend the existing Port Stephens LEP 2000, however there are provisions for the proposal to proceed as an amendment to Port Stephens LEP 2013 should it be required.

Assessment Criteria

Need for planning
proposal :

The planning proposal is considered the best way to achieving the intended outcome of allowing additional housing on the subject site. The proposed changes are better progressed through a separate planning proposal rather than included in the Port Stephens LEP 2013.

Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY

The subject site is identified in the LHRs as an 'existing urban area' of Medowie. The proposal would achieve actions of the Strategy in relation to providing additional housing 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. It is recommended that the Office of Environment and Heritage be consulted in relation to the proposed zoning interface with conservation lands within the Corridor.

LOCAL PLANNING STRATEGIES

The planning proposal is considered consistent with Port Stephens Planning Strategy. The PSPS identifies Medowie as one of three main urban release areas identified. The PSPS aims for additional infill development within existing urban areas at Medowie.

Port Stephens Planning Strategy (PSPS) has not been endorsed by the Director General. Council has submitted the PSPS for endorsement, however have been informed that no local planning strategies in the Lower Hunter will be endorsed until after the 5 year review of the Lower Hunter Regional Strategy is complete .

The subject site is not discussed in the Port Stephens Council's Medowie Strategy, as it was considered by Council to be an existing urban area with limited redevelopment potential.

The site is within 400m of the proposed 'South Street Neighbourhood' identified in the Medowie Strategy. The Gateway determined that this adjoining proposal should proceed in 2011.

STATE ENVIRONMENTAL PLANNING POLICIES

***SEPP 44 Koala Habitat Protection**

The subject site contains areas of 'preferred koala habitat' and 'preferred habitat buffer' identified by the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The CKPoM is a plan of management prepared under clause 11 of SEPP 44.

It is proposed to rezone 8.63 ha of preferred koala habitat and buffer land in the southern part of the site from 6c Special Recreation Zone to 2a Residential. It is also proposed to rezone 6.92ha of preferred koala habitat on eastern section of the site from 6c Special Recreation Zone to 7a Environmental Protection.

Under Clause 15(b) of this SEPP, Council is required to either include the land identified as a core koala habitat within an environmental protection zone, or apply special provisions to control development of that land.

The 'Eco Logical 2012' report acknowledges 'that the rezoning proposal does not strictly conform with the performance criteria of the CKPoM'. However, the ecological report states that there are inaccuracies of the mapping in the CKPoM, and that preferred koala habitat areas are not within the proposed 2a Residential Zone.

The 8.63 ha of preferred koala habitat and buffer land proposed to be rezoned to 2a is not considered a minor area. It is uncertain if the planning proposal is consistent with SEPP 44 as there appears to be differences in mapping of preferred koala habitat between the supporting Eco Logical 2012 Report and the adopted Port Stephens CKPoM. It is recommended that Council consult with OEH to determine consistency with the objectives and outcomes of SEPP44.

***SEPP 55 Remediation of land**

The site has been used in the past for mineral sand mining. A 'Groundwater Assessment

and Preliminary Management Plan' and 'Medowie, Water Quality Management Plan' were prepared in support of Amendment 19 in 2002. These reports were reviewed in 2010 by the proponent in support of the current proposal, and updated testing was undertaken. As the 2010 Review found that there was elevated concentration of lead and zinc in the groundwater, it was recommended that management of the site continue in accordance with the Medowie Water Quality Management Plan.

The previous reports undertaken in 2002 and the 2010 Review did not address soil contamination as required by SEPP 55. The 2010 Review stated that 'although in general it would appear that the potential for soil contamination would be low, direct assessment would be required to verify this.' It is recommended that Council undertake an assessment, as outlined in the planning proposal, to satisfy the presence of soil contamination as required by SEPP55.

SECTION 117 DIRECTIONS

2.1 Environmental Protections Zones

The planning proposal is inconsistent with this Direction as it does not include provisions that fully facilitate the protection and conservation of environmentally sensitive areas.

The supporting Eco Logical 2012 Report recommends that "Areas of High and Moderate Constraint are to be the focus of areas to be retained and managed to at least maintain and hopefully improve ecological values". The Planning Proposal rezones the majority of land identified as containing high constraint to 7a Environmental Protection. However, it is proposed to rezone approximately 2.3 ha of land identified as moderate ecological constraint, and 0.5 ha of high ecological constraint land to 2a Residential. The Planning Proposal is inconsistent with the recommendations of the supporting study.

The inconsistency could be considered of minor significance as it only applies to small areas of land identified as containing high value ecological land. It is recommended that Council consult with the Office of Environment and Heritage in relation to this Direction. Advice from OEHL will help determine if the loss of high and moderate ecological land is of a minor significance, or if the proposed zone boundary should be amended prior to public exhibition.

3.5 Development Near Licensed Aerodromes

Direction 3.5 applies as the planning proposal alters a zone and provisions relating to land in the vicinity of a licensed aerodrome. The subject site is located approximately 4km from the Williamstown RAAF base.

Both the Australian Noise Exposure Forecast (ANEF) 2012 and 2025 maps show the subject as being outside the 20 ANEF contour. The Planning Proposal is considered consistent with this Direction, however in accordance with 4(a) of the Direction it is recommended that Council consult with the Department of Defence.

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. Council has not considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.

Clause 51A of the Port Stephens LEP 2000 addresses the issue of Acid Sulfate Soils. It provides that a person must not, without development consent, carry out works of the kind listed below except as otherwise provided by the Clause, and requires consideration of an Acid Sulfate Soils Management Plan. The inconsistency is considered of minor significance as there are adequate planning controls in place to ensure that the proposal will avoid significant adverse environmental impacts.

4.3 Flood Prone Land

The subject site is affected by flooding, and the proposal may be inconsistent with this direction as it rezones land from recreation to residential.

The planning proposal states that the layout of proposed development is based on recent analysis and flood planning levels. However, since the original Flood Assessment undertaken for the Planning Proposal in August 2010, Council has finalised the Medowie Flood Study (Medowie Flood Study, WMA Water 2011). The Medowie Flood Study found that storm duration is a critical factor in the catchment.

The proponent has undertaken some further modelling against the Medowie Flood Study. However, Council advises that it may require further modelling be undertaken using the 2011 model developed by WMA for the Medowie Flood Study following a Gateway Determination and prior to any public exhibition. Council continues that this 'further modelling may influence the final layout and footprint of new residential development and the associated residential zoning boundaries'.

It is uncertain if the proposal is consistent with this Direction as Council cannot yet confirm if the proposed 2a Residential zone will be affected by flooding. Council should finalise flood modelling for the site and alter any affected 2a Residential boundaries consistent with the direction prior to exhibition.

4.4 Planning for Bushfire Protection

The subject site contains Bushfire Fire Prone land. Council is to consult with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation, and take into account any comments made as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.

Environmental social
economic impacts :

ENVIRONMENTAL

The planning proposal will have negative environmental effect due to the loss of land identified as containing moderate to high ecological value land. As discussed, it is appropriate for Council to consult the Office of Environment and Heritage in regards to loss of environmentally sensitive land including Koala Habitat, and minimising the impact of urban development on land within the Watagan and Stockton Green Corridor. If it is determined by the OEH that the loss of the ecologically sensitive land is not minor, Council should revise the residential zone boundary before exhibition.

The southern portion of the site was previously zoned 7c Environment Protection "C" (Water Catchment) Zone, and is comprised of lands which are in the care and control of the Hunter Water Corporation. This land is to provide for the on-going and long-term management of the surface and groundwater catchment by the Hunter Water Corporation. As discussed, Council should undertake consultation with HWC to ensure the proposal will not impact on the water catchment.

SOCIAL AND ECONOMIC

It is considered that the proposal will have positive economic and social effects for Medowie associated with increased residential development.

Pacific Dunes, Medowie

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **24 Month** Delegation : **DG**

Public Authority **Office of Environment and Heritage**
Consultation - 56(2)(d) **Hunter Water Corporation**
NSW Rural Fire Service
Other

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Flooding
Other - provide details below
If Other, provide reasons :

Contamination - to ensure consistency with SEPP 55.
Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **The site is not identified on the draft Lower Hunter Special Infrastructure Contributions (SIC) map.**

Documents

Document File Name	DocumentType Name	Is Public
PSC_Pacific_Dunes_PP.pdf	Proposal	Yes
Pacific_Dunes_SEPP44_&_Ecological_Constraints.pdf	Map	Yes
Amdt Pacific Dunes Medowie - Aerial Map_4of5 - A3L.pdf	Map	Yes
Amdt Pacific Dunes Medowie - Appln Map_1of5 - A3L.pdf	Map	Yes
Amdt Pacific Dunes Medowie - Extg Zone Map_3of5 - A3L.pdf	Map	Yes
Amdt Pacific Dunes Medowie - Precinct Map_5of5 - A3L.pdf	Map	Yes
Amdt Pacific Dunes Medowie - Propd Zone Map_2of5 - A3L.pdf	Map	Yes
2012_05_16 Port Stephens Council_16-05-2012 00_00_00_Planning Proposal Seeking Gateway Determination - Pacific Dunes_.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.1 Environment Protection Zones**
 3.5 Development Near Licensed Aerodromes
 4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 4.4 Planning for Bushfire Protection

Additional Information : **The Planning Proposal should proceed subject to the following conditions:**

1. In relation to Direction 2.1 Environmental Protection Zones, Council is to consult with the Office of Environment and Heritage and if necessary, amend the planning proposal to reflect the outcomes of this consultation prior to proceeding with public exhibition.

2. In relation to Direction 3.5 Development Near Licensed Aerodromes, Council is to consult with the Department of Defence, and take into consideration comments made as required under the direction.

3. In relation to Direction 4.3 Flood Prone Land, Council is to finalise the supporting flood study and modelling for the site, and ensure that the proposed residential zone is not within a flood planning area. Any completed flood study is to be placed on exhibition with the planning proposal.

4. In relation to Direction 4.4 Planning for Bushfire Protection, Council is to consult with the Commissioner of the Rural Fire Service and if necessary amend the planning proposal to reflect the outcomes of this consultation prior to public exhibition. Any studies completed in relation to this aspect should be placed on public exhibition with the planning proposal.

5. Council is to prepare a preliminary site investigation contamination study in accordance with clause 6(1) of State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land. This study is to be placed on public exhibition with the planning proposal.

6. Council is to ensure consistency with clause 15(b) of SEPP 44 by zoning any land defined as 'core koala habitat' under the SEPP to an environmental protection zone.

7. Council is to consult with the Hunter Water Corporation regarding potential impacts on the adjoining surface and groundwater catchments, and if necessary, amend the planning proposal to reflect the outcomes of this consultation prior to proceeding with public exhibition.

8. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 14 days; and**
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).**

9. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage**
- Hunter Water Corporation**
- NSW Rural Fire Service**
- Department of Defence**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to

Pacific Dunes, Medowie

comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

10. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

11. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.

Supporting Reasons :

The planning proposal is supported as it promotes additional housing in an existing urban area. The proposal is achieved by zoning land currently subject to an enabling clause allowing subdivision to 2a Residential. There are some concerns regarding loss of koala habitat and ecologically sensitive land on the southern boundary of the site, as well as issues regarding flooding and the impact on surface and groundwater catchments. It is considered that consultation with relevant agencies and additional studies if required will enable Council to proceed with the proposal.

Signature:



Printed Name:

Mouira Gibson

Date:

7 Sept 2012