

**Port Stephens LEP 2013- Additional permitted uses on land at 2885 Pacific Highway,
Heatherbrae (Motto Farm motel)**

Proposal Title :	Port Stephens LEP 2013- Additional permitted uses on land at 2885 Pacific Highway, Heatherbrae (Motto Farm motel)		
Proposal Summary :	The proposal seeks to allow additional uses on the existing motel site. The uses include "service stations", "restaurants and cafes" and "take-away food and drink premises". Council proposes to achieve this by adding the uses to the additional permitted uses schedule of the Port Stephens Local Environmental Plan 2013. The RU2 Rural Landscape zone that currently applies to the site would be retained.		
PP Number :	PP_2015_PORTS_001_00	Dop File No :	15/03512

Proposal Details

Date Planning Proposal Received :	29-May-2015	LGA covered :	Port Stephens
Region :	Hunter	RPA :	Port Stephens Council
State Electorate :	PORT STEPHENS	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	2885 Pacific Highway		
Suburb :	Heatherbrae	City :	Port Stephens
Land Parcel :	Lots 1,2 & 3 DP 264023		Postcode : 2324
Street :	2885 Pacific Highway		
Suburb :	Heatherbrae	City :	Port Stephens
Land Parcel :	Lot 1 DP 350551		Postcode : 2324
Street :	2885 Pacific Highway		
Suburb :	Heatherbrae	City :	Port Stephens
Land Parcel :	Lot 101 DP 807552		Postcode : 2324

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DoP Planning Officer Contact Details

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RPA Contact Details

Contact Name : Ashley Richards
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DoP Project Manager Contact Details

Contact Name :
Contact Number :
Contact Email :

Land Release Data

Growth Centre :		Release Area Name :	
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 :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	11
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 : BACKGROUND

The 4.9 ha site is located in Heatherbrae on the western side of the Pacific Highway. A motel currently operates on the site. The site is adjoined to the north by low density residential, undeveloped floodplain to the west, farm/ dwelling to the south and the Pacific Highway to the east. General industrial and bulky goods development is located on the eastern side of the Pacific Highway.

ADDITIONAL INFORMATION

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The Department received this proposal in February 2015 and requested additional clarification from Council about RMS preliminary comments. Council provided additional information on 29 May 2015, which included updated RMS advice that it accepts the proposed access points. Notwithstanding this advice, formal agency consultation with RMS on the proposal should still occur.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : The objectives of the proposal are to enable the redevelopment of part of the existing motel to accommodate a service station development. It will expand to include ancillary dining and take-away facilities.

The objectives are considered consistent with the Department's "A Guide to Preparing Planning Proposals".

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

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

Comment : Amends Schedule 1 'Additional permitted uses' of Port Stephens Local Environmental Plan 2013 to add to a new subclause 7 containing the property description and stating that development for the following purposes are permitted: service station, restaurant or café, and take-away food and drink premises.

Included in this section of the planning proposal is the LEP definition of each of the uses. This will assist the community in understanding what is proposed.

The explanation of provisions is considered consistent with the Department's "A Guide to Preparing Planning Proposals".

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

1.5 Rural Lands

2.3 Heritage Conservation

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

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

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP No 33—Hazardous and Offensive Development

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

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SEPP No 64—Advertising and Signage
SEPP (Infrastructure) 2007
SEPP (Rural Lands) 2008

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

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

If No, explain : **The proposal is inconsistent with some of the s117 directions identified. Further discussion is provided in the "Consistency with the Strategic Framework" section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment : **Council has included several maps in the planning proposal. This includes proposed site layout drawings.**

The proposed layout drawings should be excluded from the planning proposal. While they may assist in demonstrating a concept, this concept could change. Therefore it is important that the community consider whether the uses are more broadly suitable for that site rather than whether they are acceptable in a particular layout.

The DA process is the appropriate time to consider site layouts in detail. Removing this map would also make the proposal consistent with s117 direction 6.3 Site Specific Provisions.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : **Council proposes a 28 day community consultation period. This is supported.**

Additional Director General's requirements

Are there any additional Director General's requirements? Yes

If Yes, reasons : **TIMEFRAME TO COMPLETE THE PLAN**

Council proposes a 4 month completion timeframe. The Department recommends a 6 month timeframe to provide additional time to prepare the SEPP 55 site contamination investigation report, undertake community consultation and to obtain the PC Opinion.

PLAN-MAKING DELEGATION

The Department supports Council being given plan-making delegation for this proposal.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

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Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Port Stephens Local Environmental Plan 2013 came into effect in February 2014.

Assessment Criteria

Need for planning
proposal :

Council states the need for the proposal does not result from any specific strategy or report. It has been initiated at the request of the landowner who considers there to be a market for the proposed uses (in conjunction with the existing motel).

Heatherbrae should continue to be developed as an enterprise corridor and attract bulky goods retailers and general industrial activities. Council considers the proposed additional uses would not undermine this role, rather, they would support the expanding employment lands.

Heatherbrae will eventually be bypassed by the Pacific Highway and once this occurs Heatherbrae will change. Considering additional activities now which look to support the evolution of Heatherbrae is supported. To this end, the Department notes that Council is soon to exhibit a draft Raymond Terrace and Heatherbrae Strategy (2015-2031).

The strategy will further expand on Council's plans for the Heatherbrae locality, including potential changes to planning controls. It should also consider a suitable zone for this site given the current RU2 Rural Landscape zone is redundant. A condition to this effect should be included in the Gateway determination.

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Consistency with
strategic planning
framework :

LOWER HUNTER REGIONAL STRATEGY (2006)

Broadly, the regional strategy seeks to promote employment growth. This growth should occur in nominated employment lands and in centres.

This proposal would help promote jobs on a site that already provides employment and located on a main transport corridor. Allowing additional opportunities for employment at this location is considered to be generally in keeping with the objectives of the regional strategy. It is considered unlikely that the development would undermine the adjoining employment land given the uses proposed.

PORT STEPHENS PLANNING STRATEGY (2011)

Council states that Heatherbrae is identified as a specialised centre in this strategy, providing local service industrial, provide for passing highway traffic and general industrial activities. Council indicates that the proposal will help achieve develop Heatherbrae as an enterprise corridor.

PORT STEPHENS COMMERCIAL AND INDUSTRIAL LANDS STUDY (2010)

Council states this study provides support for the planning proposal as it seeks to develop bulky goods retail in Heatherbrae.

Council does not discuss how support for bulky goods development in the study translates to support for the additional permitted uses proposed here. However, as discussed in the "Need for the Planning Proposal" section of this report, facilitating the uses proposed in this location is supported.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

Council has identified a number of SEPPs as being relevant to the proposal. The proposal is not considered inconsistent at this time. These matters would be revisited at the development application stage.

SEPP 55 Remediation of Land requires further consideration. While the zone of the land would not change, the use of the land may change as a result of the additional permitted uses. Therefore Council is required to consider whether the land is contaminated. Council states the site is not known as contaminated land, however it is unclear whether Council has considered whether any Table 1 uses have occurred on the site (per subclause 6(4)(b) of the SEPP). This assessment should occur and the planning proposal be updated accordingly.

SECTION 117 DIRECTIONS

The proposal is considered consistent with the relevant s117 directions, except the following which require further discussion:

1.5 Rural Lands - this direction applies because the proposal would affect land within an existing rural zone (RU2 Rural Landscape in this instance).

The site is no longer used for rural purposes and the existing RU2 zone is considered redundant. While allowing the additional permitted uses is supported, Council needs to consider a suitable zone for this site as part of its draft Raymond Terrace and Heatherbrae Strategy. The inconsistency with this direction is of minor significance and it is recommended the Secretary agree accordingly.

4.1 Acid Sulfate Soils - this direction applies because the land is mapped as containing acid sulfate soils. Council asserts that this issue can be resolved at the DA stage. LEP clause 7.1 Acid Sulfate Soils would apply to any future development and Council notes that an acid sulfate soils management plan will be required at the DA stage. This approach,

while supported, is inconsistent with the direction because the direction requires an acid sulfate soils study to be prepared. This is considered unnecessary given the circumstances above and the Secretary should agree that the inconsistency is of minor significance.

4.3 Flood Prone Land - this direction applies because the proposal could permit a significant increase in the development of the site. Council states that only part of the site is affected and that the new uses would be located in the non-flood prone portion of the site. Further, Council asserts that any drainage related issue resulting from future development would be considered by council's flood engineers at the DA stage. The Department is satisfied with this approach. It is recommended that the Secretary agree that the inconsistency is of minor significance.

4.4 Planning for Bushfire Protection - this direction applies because part of the site is bushfire prone. Council needs to consult with the RFS before consistency with this direction can be determined.

5.4 Commercial and Retail Development along the Pacific Highway, North Coast - this direction applies as the planning proposal relates to land adjoining the Pacific Highway in the Port Stephens local government area.

This segment of the Pacific Highway while not technically satisfying the "within town" criteria of the direction because of the zone applying to the site, is considered to be "within town" in terms of the direction. As commercial development would be enabled which would have frontage to the highway, consultation with RMS should occur. Council should reconsider consistency with this direction following formal consultation with RMS.

6.3 Site Specific Provisions - this direction applies because the planning proposal has been prepared to facilitate a specific development. The direction requires that a planning proposal must not contain or refer to drawings that show details of the development proposal. Council should therefore be required to remove the proposed site layout map from the planning proposal. This would ensure consistency with the requirements of direction 6.3.

Environmental social
economic impacts :

ENVIRONMENTAL IMPACTS

Environmental impacts resulting from the proposal would need to be considered by Council. Safe access to and from the site would be an issue which would need to be resolved with RMS at the rezoning stage. Council intends to also consult with the Hunter Water Corporation given the site's proximity to the Tomago Sands drinking water catchment. This is supported.

Other issues such as the potential for noise, odour or light pollution would need to be considered either as part of the rezoning or DA process. Council nominates further investigations on these issues would occur as part of a future DA for the site. The Department does not raise issue with this approach.

SOCIAL IMPACTS

Council notes that the applicant intends to install adequate lighting and CCTC, which in addition to passive surveillance, would reduce the potential for anti-social behaviour. Further, any alcohol serving components related to the food/ drink offering would be subject to liquor licensing requirements. These matters would be investigated further as part of a future DA.

ECONOMIC IMPACTS

Council notes an additional 10 direct and 1 indirect jobs would result from the proposal. The planning proposal also includes \$ values around the economic benefits that would result from what is proposed. While the Department has not sought to verify these figures, it is anticipated that if developed as proposed, a positive economic outcome would likely

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result.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority **Hunter Water Corporation**
Consultation - 56(2) **NSW Rural Fire Service**
(d) : **Transport for NSW - Roads and Maritime Services**

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. :

If Other, provide reasons :

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 :

Documents

Document File Name	DocumentType Name	Is Public
Council Request Letter.pdf	Proposal Covering Letter	Yes
Council Report and Minutes.pdf	Proposal Covering Letter	Yes
Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.3 Heritage Conservation**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast**

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**6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions**

Additional Information : The planning proposal should be supported on the basis that the following conditions are to apply:

1. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:

(a) the planning proposal must be made publicly available for a minimum of 28 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 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Infrastructure 2013).

2. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant section 117 Directions:

- Roads and Maritime Services
- Hunter Water Corporation
- Rural Fire Service

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal. This should occur prior to community consultation.

3. Council is to update its consideration of the consistency with the section 117 Direction 4.4 Planning for Bushfire Protection and 5.4 Commercial and Retail Development along the Pacific Highway once public authority consultation has been undertaken.

4. Council is to remove the proposed Site Layout Drawings from the planning proposal to ensure consistency with section 117 Direction 6.3 Site Specific Provisions.

5. Council is to undertake a site investigation into potential contamination of the land in accordance with SEPP 55 – Remediation of Land to ensure the land is capable of supporting the proposed additional land uses. The site contamination investigation report is to be included as part of the public exhibition material.

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).

7. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.

In the covering letter, Council should be advised the following:-

- Council may use the Minister's Plan-Making delegations;
- As part of preparing the draft Raymond Terrace and Heatherbrae Strategy, Council should investigate a suitable zone to replace the existing RU2 Rural Landscape zone that applies to the site; and
- The Secretary should agree that inconsistencies with section 117 Directions 1.5 Rural Land, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance.

Supporting Reasons : As discussed in this report.

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Signature:

Trent Wink

Printed Name:

TRENT WINK

Date:

25/6/15