



Mr Wayne Wallace
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: PP_2015_PORTS_001_00 (15/03512)

Att: Ashley Richards

Dear Mr Wallace,

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to Council's letter requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to allow additional permitted uses (service stations, restaurants or cafés, take away food and drink premises) at 2885 Pacific Highway, Heatherbrae.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

While I have supported the progression of an additional permitted uses approach in this instance, Council should investigate a suitable zone to replace the existing RU2 Rural Landscape zone that applies to the site. This investigation could occur as part of the draft Raymond Terrace and Heatherbrae Strategy currently being developed by Council and implemented as part of a future amendment for Heatherbrae.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance. No further approval is required in relation to these Directions.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Should you have any questions regarding this matter, I have arranged for Ben Holmes from the Hunter office to assist you. Mr Holmes can be contacted on (02) 4904 2709.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Rowland', written in a cursive style.

26 June 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services

Gateway Determination

Planning Proposal (Department Ref: PP_2015_PORTS_001_00): to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae under Schedule 1 Additional Permitted Uses.

I, the General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae should proceed subject to the following conditions:

1. Prior to undertaking community consultation, the proposed site layout drawings should be removed from the planning proposal to ensure consistency with section 117 Direction 6.3 Site Specific Provisions.
2. Council is to demonstrate that the planning proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. Council is to prepare an initial site contamination investigation report to demonstrate that the site is suitable for the proposed additional land uses. This report is to be included as part of the public exhibition material.
3. 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 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 LEPs (Planning & Infrastructure 2013)*.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Hunter Water Corporation
 - Roads and Maritime Services
 - NSW 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. Once the consultation is undertaken with the public authorities, and information is provided, Council is to update its consideration of S117 Directions, in particular Direction 4.4 Planning for Bushfire Protection and 5.4 Commercial and Retail Development along the Pacific Highway.

5. 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).

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

Dated 26 June 2015.



David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_PORTS_001_00	Planning proposal to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae under Schedule 1 Additional Permitted Uses

In exercising the Minister's functions under section 59, the Council must comply with the Department's "*A guideline for the preparation of local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 26 June 2015

A handwritten signature in black ink, appearing to read "D Rowland".

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegated plan making reporting requirements

(Attachment 5 from “A guide to preparing local environmental plans)

Notes:

- The department will fill in the details of Table 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the Department’s publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department with the RPA’s request to have the LEP notified

Table 1 – To be completed by the Department

Stage	Date/Details
Planning Proposal Number	PP_2015_PORTS_001_00
Date Sent to Department under s56	29 May 2015
Gateway determination date	26 June 2015

Table 2 – To be completed by the RPA

Stage	Date/Details
Dates draft LEP exhibited	
Date of public hearing (if held)	
Date sent to PCO seeking Opinion	
Date Opinion received	
Date Council Resolved to Adopt LEP	
Date LEP made by GM (or other) under delegation	
Date sent to Department requesting notification (hunter@planning.nsw.gov.au)	
Brief Description of Purpose of planning proposal	

Table 3 – To be completed by the Department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

PLAN MAKING PROCESS POST GATEWAY – FOR DELEGATED MATTERS

1. Post Exhibition Review

- If planning proposal is revised, council is to email a copy of the revised proposal to the regional planning team - hunter@planning.nsw.gov.au under Section 58(2) of the Act prior to requesting LEP to be made.
- If changes to planning proposal are substantial then may no longer be authorised by the Gateway determination and a new Gateway may be required before LEP is made. Councils are encouraged to contact regional planning team to seek advice before finalising the LEP under delegation.
- Any unresolved s117 directions must be finalised before progressing with LEP

2. Legal Drafting of the LEP

- Council's request to draft and finalise the plans should be made directly to Parliamentary Counsel's Office (PCO) - parliamentary.counsel@pco.nsw.gov.au as soon as possible to ensure timeframes are met.
- The request to parliamentary.counsel@pco.nsw.gov.au is to include the planning proposal, a copy of the gateway determination and details of any change to the proposal arising from the gateway determination. The name and contact details of the Council contact officer should also be supplied.
- A copy of the request should also be forwarded to the department for administrative purposes only hunter@planning.nsw.gov.au.

3. Maps

- Council should upload the maps and GIS data directly to the department's FTP site (ftp://lepup:lep_upload@203.3.194.247/).
- Once uploaded Council should email POCGIS@planning.nsw.gov.au and advise that maps are available for checking. Any questions can be directed to Brent Condliffe on phone 02 9228 6542.
- Unless otherwise negotiated the department will only undertake a technical review of any maps to ensure they comply with LEP mapping technical guidelines.
- **No** maps or mapping/GIS data is to be sent directly to PCO

4. Making of the draft LEP s59

- Council's delegate resolves to finalise the LEP by signing the instrument (see example below).
- If council's delegate decides not to make plan or defer a matter, council should liaise with regional team for assistance.
- Council must also notify PCO if plan not proceeding

5. Notification of LEP

- Council advises plan is made and requests the department to notify the plan to hunter@planning.nsw.gov.au and the following documents to be provided for notification
 1. Signed LEP - which includes full name of LEP and PCO file reference,
 2. Signed map cover sheet and associated maps,
 3. Name and position of the delegate who signed the LEP and date,
 4. Completed Attachment 5 - delegated plan making reporting template,
 5. Copy of council's (s59) assessment which is usually the council, report/minutes and if revised, a copy of council's revised planning proposal
 6. PC opinion.
- Request to hunter@planning.nsw.gov.au by Tuesday of the week will enable notification by Friday.

Example of signature front page


Fred Smith General Manager
As delegate for the Minister for Planning 12/12/14