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Department Generated Correspondence (Y)

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Our ref: PP_2012_PORTS_001_00 (12/01107)
Your ref: PSC2011-02260

Mr Peter Gesling
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Mr Gesling,

Re: Planning proposal to rezone 40 ha of land at Anna Bay North from 1(a) Rural Agriculture to 2(a) Residential and 6(a) General Recreation for residential and recreation purposes

I am writing in response to your Council's letter dated 22 December 2011 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 amend the Port Stephens Local Environmental Plan 2000 to rezone 40 ha of land at Anna Bay North from 1(a) Rural Agriculture to 2(a) Residential and 6(a) General Recreation for residential and recreation purposes.

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

It is noted that Council's local strategy, the Anna Bay Strategy, is yet to be endorsed by the Department. Council is encouraged to provide this draft strategy to the Department as soon as possible for consideration. Council is to ensure that the Anna Bay Strategy is placed on public exhibition with this planning proposal to provide the community with strategic planning justification for the proposal.

While Council has previously completed studies for part of the proposed release area, these studies generally do not include the 10 ha of land outside the area identified as a 'proposed urban area' in the Lower Hunter Regional Strategy. Consequently, Council will need to undertake additional investigations for the expanded area demonstrating how planning for this larger area addresses relevant planning considerations. Once this additional work has been undertaken Council will also need to review the planning proposal against relevant strategic planning considerations such as Section 117 Directions. Where necessary, the planning proposal will need to be revised to reflect this updated assessment prior to public exhibition.

In particular, Council will need to provide further consideration of the following issues in relation to the expanded proposed release area:

- Biodiversity and ecological assessment, including impacts on koala populations;
- Bushfire hazard assessment;
- Traffic impact assessment;
- Acid sulphate soils assessment;
- Preliminary contamination assessment;
- Flood and drainage assessment;
- Cultural heritage assessment; and
- Infrastructure and service strategy.

The scope of many of the above studies will be determined in consultation with relevant agencies. Council should also liaise with the Department's Regional Planning team to ensure that the scope of additional work will satisfy relevant Section 117 Directions and other strategic planning policies.

At present it is not possible to demonstrate consistency with relevant Section 117 Directions for the entire proposed release area. Council is to undertake consultation with relevant agencies and provide further justification for the proposal against relevant Section 117 Directions. This information is to be included in the public exhibition material. In relation to specific Section 117 Directions, the following pre-exhibition consultation is required:

- 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;
- In relation to Direction 2.3 Heritage, Council is to consult with the local and NSW Aboriginal Land Councils;
- In relation to Direction 3.1 Residential Zones, Council is to consult with Hunter Water to determine whether drinking water and sewerage servicing is available to the site and if not, to develop an appropriate strategy for ensuring supply to the release area;
- In relation to Direction 4.3 Flood Prone Land, Council is to consult with the Office of Environment and Heritage in relation to preparing an updated flood study for the subject site; and
- 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.

At this stage the planning proposal is considered to be consistent with S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.2 Coastal Protection, 3.4 Integrating Land Use and Transport, and 5.1 Implementation of Regional Strategies. However, Council is to review the consistency of the planning proposal against these Directions following the completion of the required additional studies and prior to proceeding to public exhibition.

It is noted that the subject site contains land identified as Preferred Koala Habitat and Supplementary Koala habitat under the Port Stephens Comprehensive Koala Plan of Management prepared in accordance with State Environmental Planning Policy (SEPP) 44 – Koala Habitat. Council is required to provide information in accordance with the provisions of the SEPP to address issues relating to koala habitat management. This additional information should be included with the material for public exhibition purposes.

Council is also required to prepare a preliminary site contamination assessment report in accordance with the provisions of State Environmental Planning Policy (SEPP) 55 – Remediation of Land and the Department's guidelines for managing contaminated land. This assessment report is to be included in the public exhibition material.

Following completion of the additional planning studies and pre-exhibition consultation with identified agencies, Council is to prepare appropriate mapping for the planning proposal including zoning, minimum lot size, building height, and other associated mapping. This mapping is to be prepared for public exhibition purposes and should be prepared in accordance with the Department's Technical Guidelines for LEP Mapping.

The amending Local Environmental Plan (LEP) is to be finalised within 24 months of the week following the date of the Gateway Determination. To ensure this timeframe is met, Council is to prepare and submit to the Department's Regional Planning Team for endorsement, a project

timeline which identifies the timing for the completion of the required studies, consultation and other steps associated with the delivery of the LEP. The project timeline is to be provided within 4 weeks of the receipt of the Gateway Determination.

Council's request for the Department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date. This timeframe should also be reflected in the project timeline.

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 s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Dylan Meade of the Regional Office of the Department on 02 4904 2700.

Yours sincerely,



Sam Haddad
Director-General

28/2/2012

Gateway Determination

Planning proposal (Department Ref: PP_2012_PORTS_001_00): to rezone 40 ha of land at Anna Bay North from 1(a) Rural Agriculture to 2(a) Residential and 6(a) General Recreation for residential and recreation purposes.

I, the Director General, Department of Planning and Infrastructure, as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan 2000 to rezone 40 ha of land at Anna Bay North from 1(a) Rural Agriculture 2(a) Residential and 6(a) General Recreation for residential and recreation purposes should proceed subject to the following conditions:

1. Council is to prepare a project timeline indicating how it proposes to deliver the LEP within the nominated timeframe. This timeline is to be provided to the Department's Regional Planning Team for endorsement within 4 weeks of receipt of this Gateway Determination Notice.
2. Council will need to undertake additional investigations for the area subject to the planning proposal to address relevant planning considerations. The matters requiring further investigation are as follows:
 - Biodiversity and ecological assessment, including impacts on koala populations;
 - Bushfire hazard assessment;
 - Traffic impact assessment;
 - Acid sulphate soils assessment;
 - Preliminary contamination assessment;
 - Flood and drainage assessment;
 - Cultural heritage assessment; and
 - Infrastructure and service strategy.

This additional work will need to consider how the extra proposed 10 ha of land will integrate with the 40 ha parcel identified as a 'proposed urban area' in the Lower Hunter Regional Strategy. The additional investigations may therefore supplement existing studies already completed.

Council is not to commence public exhibition until the above studies have been completed and copies of the material provided to the Regional Planning Team.

3. Following completion of the above studies and pre-exhibition consultation, Council is to prepare appropriate mapping for the planning proposal including zoning, minimum lot size, building height, and other maps as required. These maps are to be prepared for the purposes of public exhibition and should be prepared in accordance with the Department's Technical Guidelines for the Preparation of LEP Maps. A copy of all exhibition material is to be provided to the Department's Regional Planning Team.
4. 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.
5. In relation to Direction 2.3 Heritage, Council is to consult with the Aboriginal Land Council regarding the need and potential scope of an Aboriginal heritage assessment for the site. Council is to place any completed study on exhibition with the planning proposal.

6. In relation to Direction 3.1 Residential Zones, Council is to consult with Hunter Water to determine whether drinking water and sewerage servicing is available to the site and if not, to develop an appropriate strategy for ensuring supply to the release area.
7. In relation to Direction 4.3 Flood Prone Land, Council is consult with the Office of Environment and Heritage in relation to preparing an updated flood study for the subject site. Any completed flood study is to be placed on exhibition with the planning proposal.
8. 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.
9. 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 **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 4.5 of *A Guide to Preparing LEPs (Department of Planning 2009)*.
10. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Local and NSW Aboriginal Land Councils
 - Hunter - Central Rivers Catchment Management Authority
 - Office of Environment and Heritage
 - NSW Department of Primary Industries – Agriculture
 - NSW Department of Primary Industries - Minerals and Petroleum
 - NSW Department of Primary Industries – Fishing and Aquaculture
 - Hunter Water Corporation
 - NSW Rural Fire Service
 - Transport for NSW - Roads and Maritime Services

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

11. 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).
12. The timeframe for completing the LEP is to be **24 months** from the week following the date of the Gateway determination.

Dated 29th day of Feb. 2012.


Sam Haddad
Director-General
Delegate of the Minister for Planning and
Infrastructure