

8 Waropara Road, Medowie - Amendment to Port Stephens LEP

Proposal Title : **8 Waropara Road, Medowie - Amendment to Port Stephens LEP**

Proposal Summary : **This Planning Proposal aims to amend the minimum lot size applying to part of the land at 8 Waropara Road, Medowie.**

PP Number : **PP_2013_PORTS_005_00**

Dop File No : **13/10213**

Proposal Details

Date Planning
Proposal Received : **20-Jun-2013**

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 : **8 Waropara Road**

Suburb :

City : **Medowie**

Postcode : **2318**

Land Parcel : **Part of Lot 10, DP 1051742**

DoP Planning Officer Contact Details

Contact Name : **Susan Blake**

Contact Number : **0249042700**

Contact Email : **susan.blake@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Sarah Connell**

Contact Number : **0249800462**

Contact Email : **council@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**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	2.35	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	20	No. of Dwellings (where relevant) :	20
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 :	Council resolved at its Ordinary Council Meeting on 28 May 2013 to send the Planning Proposal to the Department of Planning & Infrastructure requesting a Gateway Determination to enable amendments to Port Stephens LEP pursuant to section 56 of the EP&A Act 1979. Council at this meeting also requested written authorisation to exercise Council's delegation in the making of the draft Local Environmental Plan under section 59 of the EP&A Act 1979. The final draft version of the Comprehensive Port Stephens LEP 2013 was adopted by Council on 26 March 2013.		
External Supporting Notes :	The Planning Proposal is somewhat ambiguous regarding the extent of the proposed amendments to the eastern portion of the lot. Council needs to clarify whether the zone and minimum lot size applying to this portion will be investigated. If so, this needs to be identified and an explanation of provisions to be included and updated in the planning proposal prior to exhibition. Council should consult with the Department's Regional Team to agree on the scope of additional required information.		

Adequacy Assessment

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

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

Comment : **The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) which is to amend the minimum lot size applying to part of the allotment from 1 hectare (Ha) to 1000 square metres (sqm). The statement of objectives is supported.**

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

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

Comment : **Completion of this PP is likely to be achieved after the Comprehensive Port Stephens LEP 2013 (PS LEP 2013) is published (due for completion August 2013).**

Under the Comprehensive Port Stephens LEP 2013 the PP will amend the Port Stephens LEP 2013 Minimum Lot Size Map. Part of the subject lot will have the minimum lot size

reduced from 1 ha to 1000 sqm allowing further subdivision of the land.

The PP would amend the existing PS LEP 2000 by inserting site specific provisions allowing the consent authority to approve part of the land for subdivision to a minimum allotment size of 1000 sqm.

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

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

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 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

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? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Council has proposed a minimum 28 days for public consultation. As the PP is low impact a 14 day public exhibition period is recommended.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons :

The following matters are inconsistent with the s.117 Directions:

4.1 Acid Sulfate Soils

Under cl.6, of the s.177 Direction, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing the appropriateness of the change of land use given the presence of ASS. The amendment to the minimum lot size will enable an intensification of the land. The land is classified as Class 5 on the 'Acid Sulfate soils Map' of the PS LEP 2000. Any future development application will be assessed against the acid sulfate provisions within the PS LEP 2000 or pending Comprehensive PS LEP 2013. Therefore matters relating to acid sulfate soil can be adequately addressed under

existing legislative provisions and local planning provisions.

Consequently, in accordance with cl.8(b) of s.117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s.117 Direction are of minor significance.

4.3 Flood Prone Land

Under cl.3 of the s.117 Direction, this direction applies when a PP creates, removes or alters a zone or a provision that affects flood prone land. The broader lot is identified as being flood prone.

In accordance with the Medowie Drainage and Flood Study 2012, Medowie falls within the Campervale and Moffits Swamp Catchment. The subject lot is located in the Campervale inundation area, which Council identifies is very sensitive. Residents are affected by prolonged storm events and run-off from upstream developments.

The PP will allow that part of the subject land unconstrained from flooding to permit a minimum lot size for subdivision of 1000 sqm. However Council notes that until such time as a catchment-wide solution is determined, a site-specific solution with drainage and flooding strategy is required.

In accordance with cl.9 of the s.117 Direction to enable examination of the consistency with this Direction, further investigation and consultation is required.

4.4 Planning for Bushfire Protection

Under cl.3 of s.117 Direction, this Direction applies if the PP will affect, or is in proximity to land mapped as bushfire prone land. The site is identified as being bushfire prone.

Consequently, in accordance with cl.4 and cl.7 of the s.117 Direction, to enable examination of the consistency with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination.

6.3 Site Specific Provisions

Under cl.3 of the s.117 Direction, this Direction applies when a planning authority prepares a PP that will allow a particular development to be carried out.

It is likely the Comprehensive Port Stephens LEP 2013 will be published prior to this PP being finalised. Consequently the Minimum Lot Size Map can be changed without impacting on the zone maps or being inconsistent with this s.117 Direction.

However it is noted, if the PP amended PS LEP 2000 a site specific provision would be required to enable the consent authority to allow part of the land to be subdivided to a minimum allotment size of 1000 sqm rather than the permitted 1 Ha. If the PP proceeds under the provisions of PS LEP 2000 it is inconsistent with cl.4 of s.117 Direction. This matter will be further considered at s59.

The following SEPPs are applicable to the PP and have been addressed in the PP:

SEPP 44

The Port Stephens Comprehensive Koala Plan of Management (CKPoM) (2001) implements the provisions of SEPP 44. Council has indicated that the present Koala assessment undertaken for the site is not adequate as it does not address the requirements for rezonings as set out in the Port Stephens Koala Comprehensive Management Plan.

This PP will only amend the minimum lot size on part of the land not affected by koala

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habitat. However as the broader site is large, greater than 1 Ha, and the eastern side of the allotment contains Preferred Koala Habitat, Council's request for an amended and updated Koala assessment to address this matter is supported.

SEPP 55 - Remediation of Land

In accordance with cl.6, when preparing a draft LEP, Council must consider whether the land is contaminated and be satisfied the land is suitable in its contaminated state (or suitable after remediation) for the purposes on which the land in the zone concerned is permitted to be used. If remediation is required, Council needs to be satisfied that the land will be so re-mediated before the land is used for that purpose.

No information has been provided with the PP to enable assessment of contamination on the site. Council has requested that a preliminary contaminated site assessment be required as part of the PP process, this request is supported.

SEPP (Rural Lands) 2008

In accordance with cl. 2, the policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes.

Council has not undertaken an assessment against this SEPP. The PP will change the minimum lot size and increase the permissible density of land within a rural zone. However the site is identified in the Medowie Strategy, the Port Stephens Planning Strategy for residential purposes. The land subject of the PP is identified as a new urban release area in the Lower Hunter Regional Strategy. Consequently in preparing this PP Council has examined the constraints of the land and has sought to balance the social, economic and environmental interests of the community by protecting natural resources, maintaining biodiversity, and protecting native vegetation.

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **August 2013**

Comments in
relation to Principal
LEP :

The draft Comprehensive Port Stephens LEP 2012 (PS LEP 2012) received a Gateway Determination on 17 July 2012. The PS LEP 2012 was publicly exhibited and has been submitted to the Department for review, pending the LEP being made (PS LEP 2013) due August 2013.

Assessment Criteria

Need for planning
proposal :

Council indicates the PP is an outcome of the Medowie Strategy which identifies the site for residential purposes. The minimum lot size boundary is based on environmental constraints, and the outcome of studies already undertaken. this includes and ecological, drainage and bushfire assessment.

Council indicates the PP and amendment to the PS LEP 2000 or PS LEP 2013 is the only way to achieve the intended outcomes as the lot size is controlled by the LEP.

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Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)

Medowie is identified as a new urban release area in the LHRS. The site is not specifically identified in the LHRS, however the amendment is consistent with the objectives and outcomes of the LHRS.

Port Stephens Planning Strategy 2011 (PSPS) - Not endorsed by the DG.

The PP is consistent with the PSPS which identifies the site for 'Potential Future Residential' development.

Medowie Strategy 2009

The PP notes the various planning principles of the strategy and the proposal's consistency with the the strategy.

However, the figure showing the 'Waropara Neighbourhood' in the Medowie Strategy which includes the subject site, has a range of lot sizes from standard 'Residential' (550-600 sqm) to 'Environmental Living' and 'Rural Small Holdings' (1000-1500 sqm). Council indicates that the PP seeks to average the lot sizes identified for the site to 1000 sqm, given the large lot development and the constraints of the land. Council will retain a 1 Ha minimum lot size for the remaining constrained flood prone land. However in the PP, Council indicates that the zone and minimum lot size applying to the remaining area of the subject lot will be investigated in progression of the PP. This issue will need to be clarified in the PP prior to exhibition.

Medowie Drainage and Flood Study 2012

Medowie falls within the Campervale and Moffits Swamp Catchment. Council notes that until such time as a catchment-wide solution is determined, a site-specific solution with drainage and flooding strategy for the proposal is required. The PP will allow that part of the subject land unconstrained from flooding to permit a minimum lot size for subdivision of 1000 sqm.

Environmental social economic impacts :

Council has considered the social, economic and environmental outcomes of the site.

Council notes that development of the site is likely to support the existing services in Medowie through an increased population, provide additional residential land on a site identified within the urban release area, and consequently this will support local schools, churches and social groups including sporting and recreational clubs.

This PP will only amend the minimum lot size on part of the land not affected by koala habitat or flooding. However Council has confirmed that the broader site may be subject to impacts from the development including storm water and waste disposal, and possible koala habitat removal. Council has also requested consultation with the Worimi Local Aboriginal Land Council as an Aboriginal and Archaeological and cultural impact assessment has not be undertaken on site.

Consequently as the site is greater than 1 Ha, and the eastern side of the allotment contains Preferred Koala Habitat, and is flood affected, the department supports Council's requests for the additional studies and consultation.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2) (d) :	NSW Aboriginal Land Council Office of Environment and Heritage NSW Rural Fire Service Other		

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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. :

Other - provide details below

If Other, provide reasons :

Council's PP raises issues on a number of matters that they wish to have addressed that are substantial considering the proposed Minimum Lot Size change. However due to the site constraints and Council's concerns, their request is supported.

*** The Koala assessment undertaken for the site does not address the requirements for rezoning as set out in the Port Stephens Comprehensive Koala Plan of Management. Council requires an amended Koala assessment that addresses this matter.**

*** A geotechnical report was undertaken for the site, Council indicates a preliminary contamination assessment is required to satisfy SEPP 55.**

*** A site specific drainage solution, comprising of a drainage and flooding strategy for the proposal is required in order to progress the PP.**

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **Medowie is identified as a Urban Release Area requiring State Infrastructure arrangements. The site has been mapped under the draft Environmental Planning & Assessment Amendment (Lower Hunter - Special Contributions Area) Order 2011. Under PS LEP 2013 the land subject to the minimum lot size change is to be mapped as an Urban Release Area.**

Documents

Document File Name	DocumentType Name	Is Public
Planning_Proposal_Port_Stephens_Council_8_Waropara_Road_Medowie.pdf	Proposal	Yes
Port_Stephens_Council_PP_Section_56_Notification_8_Waropara_Road_Medowie.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.3 Site Specific Provisions**

Additional Information : **It is recommended that:**

Support the Planning Proposal and proceed subject to the following conditions:

1. Council needs to clarify whether the zone and minimum lot size applying to the remaining eastern area of the subject lot will be investigated in progression of the Planning Proposal. If so, this needs to be identified and an explanation of provisions to be included and updated in the planning proposal prior to exhibition. Council should consult with the Department's Regional Team to agree on the scope of additional required information.

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

(a) the Planning Proposal be made publicly available for 14 days; and

(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposal as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).

3. The Director General (or delegate) agree with the following section 117 Direction inconsistencies as being of minor significance -

*** 4.1 Acid Sulfate Soils**

4. Community consultation is required with the following public authorities under 56(2)(d) of the EP&A Act

*** NSW Rural Fire Service to determine consistency with s.117 Direction - 4.4 Planning for Bushfire Protection.**

*** Office of Environment and Heritage to determine koala habitat impacts.**

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.

Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

5. Council has noted that the following assessments are required as part of the PP. The studies will need to be included as material to be placed on exhibition with the planning proposal:

*** The Koala assessment undertaken for the site does not address the requirements for rezonings as set out in the Port Stephens Koala Comprehensive Management Plan. As such, Council requires an amended and updated Koala assessment to address this matter.**

*** A preliminary site investigation contamination study in accordance with clause 6(1) of State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land is required.**

*** A site specific drainage solution, comprising a drainage and flooding strategy for the proposal is required. Further investigations are to be undertaken to determine consistency with s.117 Direction - 4.3 Flood Prone Land.**

6. A public hearing is not required to be held into the 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 submission of reclassifying land).

7 The site is identified as an Urban Release Area. Under PS LEP 2013 the land subject to the minimum lot size change is to be mapped as an Urban Release Area so that the development contributes toward the provision of designated State infrastructure, to provide for required public utility infrastructure.

8. The timeframe for completing the LEP is 12 months from the week following the date of the Gateway Determination.

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9. Council exercise their delegations under section 59(1) of the EP&A Act.

Supporting Reasons :

- * Port Stephens Council has identified the need for this amendment to meet operational needs, and assists to implement their strategic documents goals and outcomes.
- * Medowie is identified as an Urban Release Area requiring State Infrastructure arrangements.
- * A 12 month timeframe is appropriate as the PP requires additional studies to be undertaken.
- * Council's resolution has indicated that Council wish to exercise their delegations under section 59(1) of the EP&A Act.

Signature:



Printed Name:

K. O'FLAHERTY

Date:

7-7-13

