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Our ref: PP_2013_PORTS_004_00 (13/10428)

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

Dear Mr Gesling,

Planning proposal to amend Port Stephens Local Environmental Plan (LEP) 2000 or draft Port Stephens LEP 2013

I am writing in response to your Council's request for a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to reclassify part Lot 51, DP 803471 at 1 Diemars Road, Salamander Bay from 'community' to 'operational' land and rezone land at 22 Homestead Street and 1 Diemars Road, Salamander Bay to 2(a) Residential 'A' and 7(a) Environmental Protection 'A' under Port Stephens Local Environmental Plan (LEP) 2000 or rezone the subject land to R2 Low Density Residential and E2 Environmental Conservation, apply a minimum lot size of 500sqm and a maximum building height of 9m for land proposed to be zoned R2 and apply a minimum lot size of 40ha for land proposed to be zoned E2 under draft Port Stephens LEP 2013.

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

In relation to S117 Direction 6.2 Reserving Land for Public Purposes, Council is reminded that the Director General's agreement to the reduction of land for public purposes is still required and is to occur prior to the plan being made.

Council is reminded of its obligations for undertaking a public hearing in relation to the proposed reclassification of land in accordance with the department's practice note *PN09-003, Classification and reclassification of public land through a local environmental plan*. A copy of PN09-003 is to be exhibited with the planning proposal.

Council is to ensure that the oyster leaseholders and adjoining landowners are consulted with directly on the proposed rezoning and reclassification and the timeframes and public exhibition details of the planning proposal.

The Minister delegated his 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 given that the Governor's approval is not required in this instance, I have decided to issue an authorisation for Council to exercise delegation to make this plan. Council is reminded that should the reclassification require the Governor's approval, the planning proposal cannot proceed under delegation. In this instance, Council is to make a request to the department to draft and finalise the LEP.

The amending LEP is to be finalised within 12 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.

Should you have any queries in regard to this matter, please contact Ken Phelan of the regional office of the department on 02 4904 2700.

Yours sincerely,


Neil McGaffin
Executive Director
Rural and Regional Planning
Planning Operations and Regional Delivery 17.7.13

Gateway Determination

Planning proposal (Department Ref: PP_2013_PORTS_004_00): to rezone, reclassify and amend applicable development standards for land at Salamander Bay.

I, the Executive Director, Rural and Regional Planning at the 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 (LEP) 2000 to reclassify part Lot 51, DP 803471 at 1 Diemars Road, Salamander Bay from 'community' to 'operational' land and rezone land at 22 Homestead Street and 1 Diemars Road, Salamander Bay to 2(a) Residential 'A' and 7(a) Environmental Protection 'A' or rezone the subject land to R2 Low Density Residential and E2 Environmental Conservation, apply a minimum lot size of 500sqm and a maximum building height of 9m for land proposed to be zoned R2 and apply a minimum lot size of 40ha for land to proposed to be zoned E2 under draft Port Stephens LEP 2013 should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to update the planning proposal to clarify that the reclassification of the land at Diemars Road, Salamander Bay from 'community' to 'operational' land may remove public access to the land and remove opportunities for the recreational use of the land. Council is to place on public exhibition with the planning proposal, the Open Space Consolidation Review (2007), the Open Space Consolidation Review Update Report (2010), the acid sulfate soils management measures for the site and practice note PN09-003, *Classification and reclassification of public land through a local environmental plan*.
2. Prior to undertaking public exhibition, the planning proposal is to be updated to advise that the subject land will be identified as an Urban Release Area.
3. Once consultation with public authorities has been undertaken and, if required upon finalisation of other supporting works, Council is to update its consideration of S117 Directions 1.4 Oyster Aquaculture, 2.1 Environment Protection Zones, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 6.2 Reserving Land for Public Purposes and State Environmental Planning Policy (SEPP) 44 - Koala Habitat Protection to reflect the outcomes of consultation and work undertaken.
4. 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 (Department of Planning & Infrastructure 2013)*.
5. 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 or demonstrate consistency with relevant S117 Directions:
 - Office of Environment and Heritage (S117 Direction 2.1 Environment Protection Zones)
 - NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)
 - Department of Primary Industries – Fishing and Aquaculture (S117 Direction 1.4 Oyster Aquaculture)

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.

6. Council is to place on public exhibition with the planning proposal, a copy of the submission made by the Office of Environment and Heritage.
7. A public hearing is not required to be held into the matter under section 56(2)(e) of the EP&A Act. However, a public hearing is required to be held into the matter in accordance with the department's practice note PN09-003, as the planning proposal involves a reclassification of land from community to operational.
8. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 17th day of July 2013.



Neil McGaffin
Executive Director
Rural and Regional Planning
Planning Operations and Regional Delivery
Department of Planning and Infrastructure

Delegate of the Minister for Planning and Infrastructure

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Port Stephens Council is authorised to exercise the functions of the Minister for Planning and Infrastructure 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_2013_PORTS_004_00	Planning proposal to reclassify part Lot 51, DP 803471 at 1 Diemars Road, Salamander Bay from 'community' to 'operational' land and rezone land at 22 Homestead Street and 1 Diemars Road, Salamander Bay to 2(a) Residential 'A' and 7(a) Environmental Protection 'A' under Port Stephens Local Environmental Plan (LEP) 2000 or rezone the subject land to R2 Low Density Residential and E2 Environmental Conservation, apply a minimum lot size of 500sqm and a maximum building height of 9m for land proposed to be zoned R2 and apply a minimum lot size of 40ha for land proposed to be zoned E2 under draft Port Stephens LEP 2013.

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

Dated 17 July 2013



Neil McGaffin
Executive Director
Rural and Regional Planning
Planning Operations and Regional Delivery
Department of Planning and Infrastructure

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 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_2013_PORTS_004_00
Date Sent to Department under s56	June 2013
Date considered at LEP Review Panel	11/07/2013
Gateway determination date	17/07/2013

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
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 DP&I requesting notification		

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information: