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10/12168

Department Generated Correspondence (Y)

DEPARTMENT OF PLANNING

Plan Making and Urban Renewal

DRAFT PORT STEPHENS LEP 2000 (AMENDMENT NO. 22) - PENDING LEP

PURPOSE

- To enable the conversion of Port Stephens Council draft LEP Amendment 22 from a pending LEP to a Planning Proposal under the current Part 3 of the *Environmental Planning & Assessment Act 1979*.

RECOMMENDATION

- That the Deputy Director General:
 - as delegate of the Director General under clause 12(2) of the *EP&A Regulation 2000*, **declare** that the former plan making provisions cease to apply to draft Port Stephens LEP 2000 (Amendment 22);
 - as delegate of the Minister under clause 122(2) of Schedule 6 of the *EP&A Act 1979*, **declare** that all conditions precedent up to s.59 of the *EP&A Act 1979* are dispensed with for the making of the draft Port Stephens LEP 2000 (Amendment 22); and
 - **sign** the attached letter, if approved.

CURRENT POSITION

- Draft Port Stephens LEP 2000 (Amendment 22) seeks to amend the Port Stephens LEP 2000 to enable an urban release area, consistent with Council's local strategy, which would yield approximately 50 lots east of Anna Bay village on Tomaree Peninsula.
- The draft LEP was prepared under the former provisions of Part 3 of the *EP&A Act 1979* and is a pending LEP to which clause 12 of the *EP&A Regulation* applies.
- Port Stephens Council has requested that the draft LEP be converted into a planning proposal under the current Part 3 process.
- Converting the draft LEP into a planning proposal is supported by the Regional Team, as it is consistent with the Council's local strategy and the determinations of the Director General regarding the disputed rural residential proposal.
- Draft LEP 22 has been re-submitted to the Department generally in the form in which it was originally exhibited – i.e. without the rural residential component. However, the exhibited draft plan has been altered to provide a minor (approx. 20 m.) extension of the proposed residential zone at its eastern boundary.
- It is recommended that in view of the proposed extension of the residential zone boundary that the immediately adjoining landowner(s) be notified of this alteration to the draft plan and invited to comment.
- It is also recommended that the Council undertake fresh consultation with DECCW prior to finalising the draft LEP as legislation relating to biodiversity offsets has changed since 2006. There is a small amount of vegetation to be lost through the development however; it is considered that DECCW will have regard to the large amount of land to be zoned 7 (a) Environment Protection under the draft LEP.
- Part of the subject site is flood affected and Council has undertaken to resolve the flooding issue through civil works on the site. This is to be funded by the developer by a suitable Voluntary Planning Agreement to be resolved prior to the finalisation of the draft LEP.
- Due to necessary consultation with DECCW and resolution of the VPA, it is the Regional Office's view that the draft LEP be given 12 months to be finalised.

BACKGROUND

- Draft LEP 22 was originally considered by the Department in 2005 and a Section 65 certificate was issued at the time with the condition that the draft LEP be amended to exclude an area of proposed rural residential development.
- The draft LEP was exhibited without the rural residential component in 2006 and no submissions were received. The Council took no further action to finalise the dLEP at that time, but then subsequently sought to have the area of proposed rural residential development re-inserted into the plan.
- At its meeting of 12 February 2009, the LEP Review Panel considered the Council's request for a fresh s.65 certificate for the draft LEP which had been re-submitted with the proposed rural residential area re-inserted. The Director General did not support the re-instatement of the rural residential area and refused to issue a revised certificate.
- In April 2009, Port Stephens Council amended its *Anna Bay Strategy and Town Plan* to include the rural residential development identified in draft LEP 22. This amendment to the Strategy was not supported by the Director General.

Contact Officer: Paul Maher
Newcastle Planning Team
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Regional Director 23/6/10
Hunter and Central Coast Region


24/6/10
Executive Director
Planning Operations


29/6/10
Deputy Director General
Plan Making and Urban Renewal
As delegate of the Minister and the Director General

**FOR
DEPUTY DIRECTOR
GENERAL'S
SIGNATURE
IF APPROVED**

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

10/12168

Dear Mr Gesling

I refer to your letter to the Department dated 30 April 2010 requesting a Gateway Determination under section 56 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) for draft *Port Stephens Local Environmental Plan 2000* (Amendment No 22) that was previously exhibited by Council.

I am writing to notify you that I have determined, as delegate of the Director General, under clause 12(2) of the *Environmental Planning and Assessment Regulation 2000* that the former LEP plan-making provisions cease to apply to the Planning Proposal. Therefore the current provisions of Part 3 of the EP&A Act now apply.

Furthermore I have, as the delegate for the Minister for Planning, determined under clause 122(2) of Schedule 6 to the EP&A Act to dispense with all conditions precedent up to section 59(1) of the EP&A Act for the making of this Planning Proposal.

However, regarding the minor extension of the proposed residential zone, Council is required to notify the owners of any land immediately adjoining this alteration to the draft plan, to provide an opportunity for comment. Council will also be required to consult with DECCW regarding the loss of vegetation and minor extension of the proposed residential zone prior to submitting the Planning Proposal under section 59.

Council is encouraged to finalise the Planning Proposal within 12 months of the week following the date of this letter. Council's request for the Department to draft and finalise the draft LEP should be made at least 6 weeks prior to the projected publication date.

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 Paul Maher of the Hunter & Central Coast Region Office of the Department on 02 49042700.

Yours sincerely


29/6/10

Tom Gellibrand
Deputy Director General
Plan Making and Urban Renewal
(As delegate of the Minister and Director General).

**FOR
DEPUTY DIRECTOR
GENERAL'S
SIGNATURE
IF APPROVED**