

Eastern Entrance Nelson Bay Road, Nelson Bay

Proposal Title : **Eastern Entrance Nelson Bay Road, Nelson Bay**

Proposal Summary : **The planning proposal seeks to rezone 14ha of land at Nelson Bay from 1(a) Rural Agriculture to 2(a) Residential and 7(a) Environmental Protection. The rezoning will facilitate up to 168 residential dwellings and protect land for a environmental corridor.**

PP Number : **PP_2012_PORTS_010_00** Dop File No : **12/18130**

Proposal Details

Date Planning Proposal Received :	12-Nov-2012	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 : **Nelson Bay Road**

Suburb : **Nelson Bay** City : Postcode : **2315**

Land Parcel : **Lot 3452 DP 1044499, Lot 3551 DP 622263 and Lot 392 DP 753204**

DoP Planning Officer Contact Details

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RPA Contact Details

Contact Name : **Rebecca Connor**

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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) :	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots : 168	No. of Dwellings (where relevant) :	168
Gross Floor Area : 0	No of Jobs Created :	0

The NSW Government Yes
Lobbyists Code of
Conduct has been
complied with :
If No, comment :

Have there been **No**
meetings or
communications with
registered lobbyists? :
If Yes, comment :

Supporting notes

Internal Supporting
Notes : **Lot 3541 DP 1044499 (141 Stockton Road, Nelson Bay) is not included in the planning proposal as it is an electrical substation. Council advises that it will consider zoning the substation from 1(a) to SP1 as part of finalisation of the Comprehensive Port Stephens LEP 2012, as it was exhibited as RU2. It is not considered necessary to include this land in the planning proposal.**

Lot 3542 DP 1044499 is Crown Land, and was previously subject to Aboriginal Land Claims (19559 and 23901). The Minister refused these Aboriginal land claims on 16 July 2010. One ground for refusal was that 'the land was needed, or likely to be needed, as residential lands'. On 12 November 2010 the Aboriginal Land Councils appealed against the Minister's decision, to the Land and Environment Court. The Crown Solicitor's Office requested information from the Department relating to the appeal, regarding the need of the lot for residential land. The Department responded in 25/1/2011 that the site was not identified in the LHRS or any known local strategies as proposed residential land, and that it did not have any other information indicating that the land was required for residential land.

Port Stephens Council owns Lot 392. This land functions as a drainage retention basin and is included in the planning proposal as it is 0.3ha and will be potentially be surrounded by 2(a) Residential land.

Council resolved on 9/10/2012 to proceed with the planning proposal on the basis that the proponent will investigate biodiversity offsets under the NSW Biodiversity Banking and Offsets Schemes following the Gateway Determination.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : **The statement of objectives explains that the proposal intends to rezone land at Nelson Bay for residential development and environmental protection.**

The statement of objectives is supported.

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

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

Comment : **The explanation of provisions states that the objectives or intended outcomes are to be achieved through amendments to the Zoning Map of Port Stephens LEP 2000.**

The proposal also indicates that depending on timing, the proposed rezoning may be achieved through an amendment to Land Use Zone Maps of Port Stephens LEP 2012. Council have also indicated that an amendment to minimum lot size (MLS) maps will also be required.

The explanation of provisions is supported. Council will need to update the provisions before exhibition to refer to proposed changes to the MLS map of the PS LEP2012.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA : **1.2 Rural Zones**
 1.3 Mining, Petroleum Production and Extractive Industries
* May need the Director General's agreement **2.1 Environment Protection Zones**
 4.1 Acid Sulfate Soils
 4.4 Planning for Bushfire Protection

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

e) List any other matters that need to be considered : **Fingal Bay Link Road**
 The site is located to the north of the proposed Fingal Bay Link Road. Council advises that the land has been reserved for RMS acquisition, however construction has not started. Part of the strategic justification for the proposal provided by Council is the location of the site between the proposed Link Road and Nelson Bay Road. It is recommended that Council seeks confirmation from RMS on the proposed route of the Link Road.

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 : **Council have not prepared proposed minimum lot size and land use zone maps for a possible amendment to the Port Stephens LEP 2012. Council will be required to complete these before exhibition. It is recognised that Council may vary the zone boundaries based on outcomes of studies.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council proposes that the Planning Proposal be exhibited for 28 days.**

The 28 day exhibition is supported as the subject site is not identified as a proposed urban area in the LHRS.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **July 2013**

Comments in relation
to Principal LEP :

A Gateway Determination for the principal LEP was issued on 10 July 2012, with 12 month timeframe for completion.

The planning proposal intends to amend the existing Port Stephens LEP 2000, however there are provisions for the proposal to proceed as an amendment to Port Stephens LEP 2013 should it be required.

Assessment Criteria

Need for planning
proposal :

The planning proposal is considered the best way to achieving the intended outcome of allowing additional housing on the subject site. The proposed changes are better progressed through a separate planning proposal rather than included in the Port Stephens LEP 2012.

Consistency with strategic planning framework :

LOWER HUNTER REGIONAL STRATEGY (LHRS)

The subject site is not identified in the LHRS as a 'proposed urban area'. However, 'proposed urban areas' are generally sites greater than 50 ha, and the LHRS allows for consideration of smaller sites for urban development. The subject site is 16ha. The LHRS states that 'sites less than 50 ha may be developed if consistent the principles of the Strategy and if they are identified within an endorsed local strategy'.

It is considered that the development of the site will be consistent with the principles of the strategy, particularly in relation to providing the projected 1,200 dwellings for Nelson Bay. Nelson Bay is identified as a town centre in the LHRS. The site is considered to be a logical extension to the existing urban area. The proposal will also provide opportunities for a range of housing types, and support the Nelson Bay centre.

The subject site is not identified in an endorsed local strategy (detailed discussion of the local strategy for Port Stephens can be found below). The LHRS allows consideration of 'other release sites' which are not identified in an endorsed local planning strategy. It should be noted that subject site is not within the Watagan to Stockton Green Corridor.

LOCAL PLANNING STRATEGIES

Port Stephens Planning Strategy (PSPS) has not been endorsed by the Director General. Council has submitted the PSPS for endorsement; however Council have been informed that no local planning strategies in the Lower Hunter will be endorsed until after the 5 year review of the LHRS is complete. It is expected that a review of the LHRS may be complete around mid 2013.

The subject site is not identified in the PSPS as a new release urban area. The PSPS identifies Nelson Bay as town centre as having infill development potential. However, there is no specific discussion of any new release area development potential for land surrounding Nelson Bay. The site is located approximately 1.2km from the Nelson Bay town centre and is forms an extension to the existing urban area.

Council has not published studies or strategies of the urban development potential for land surrounding the existing Nelson Bay urban area. The PSPS does however note that the identified new release areas will not meet expected demand for housing, and that other sites (such as the land subject to the proposal) may need to be considered to ensure adequate supply. The PSPS makes provision for consideration of planning proposals not identified in the strategy which are '...minor rezoning proposals, which on an LGA wide scale, are considered inconsequential may be considered in the context of minimal / nil impact to the established commercial hierarchy, residential and employment land supply and growth footprints'.

It is considered that the proposal will reinforce the commercial hierarchy of Port Stephens, and on a LGA wide scale will positively impact on residential land supply. The proposal will assist in meeting residential supply targets set for the town centre of Nelson Bay.

The subject site is not discussed in the Port Stephens Council's Nelson Bay Town Centre Strategy (not endorsed), as the strategy focuses on infill in the immediate boundary of the existing town centre, of which the subject site is not within.

STATE ENVIRONMENTAL PLANNING POLICIES

***SEPP 44 Koala Habitat Protection**

The subject site contains areas of 'supplementary koala habitat' identified by the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The CKPoM is a plan of management prepared under clause 11 of SEPP 44. Under Clause 15(b) of this SEPP, Council is required to either include the land identified as a core koala habitat within an environmental protection zone, or apply special provisions to control development of that land. Although it is proposed to rezone areas of 'supplementary koala habitat' to residential, however the subject site does not contain areas of 'core koala habitat' and the

proposal is therefore considered consistent with this SEPP.

***SEPP 55 Remediation of land**

The site has been used in the past for agricultural uses. Council advises that although there is no known contamination, and the site is not listed on Council's Contamination Register, Council will require investigation to satisfy the presence of soil contamination as required by SEPP 55 after Gateway.

SECTION 117 DIRECTIONS

1.2 Rural Zone

The planning proposal is inconsistent with this Direction as it rezones land from a rural zone to a residential zone. The inconsistency is considered of minor significance as the land has limited agricultural values. The subject site is predominately vegetated (13ha is vegetated out of the 16ha area in total), contains poor soils and is not used for agricultural activities. This site is not mapped as regionally significant agricultural land in the LHRS.

1.3 Mining, Petroleum Production and Extractive Industries

Petroleum Exploration Licence 458 applied to the subject site, but expired on 6 July 2011. A test hole was drilled 35km away and it is considered that the proposal will not affect the extraction of hydrocarbon resources if it becomes viable in the future.

1.5 Rural Lands

The planning proposal is consistent with this Direction. Although zoned rural, the site is vegetated and is not considered to contain active rural lands. The proposal is consistent with the Rural Planning Principles listed in SEPP (Rural Lands) 2008.

2.1 Environmental Protections Zones

The planning proposal is inconsistent with this Direction as it does not include provisions that fully facilitate the protection and conservation of environmentally sensitive areas. It is proposed to rezone 11ha of 'Coastal Sand Apple – Blackbutt Forest' to residential. The subject site also adjoins the Tomaree National Park. The proposal's inconsistency with this Direction is not considered of minor significance, is not justified by a local strategy, and is not in accordance with the LHRS.

A study (Wildthing Environmental Consultants - Seven Part Test on Threatened Flora and Fauna 2011) has been prepared in support of the planning proposal. The study concluded that it is unlikely that 'the proposed works will constitute a significant adverse impact upon any viable local populations or individuals of the threatened species, Endangered Populations or Endangered Ecological Communities considered in this report'. However this study does not give consideration to the objectives of this direction, and the inconsistency with Direction cannot be justified.

Council proposes to undertake an additional ecological studies to satisfy the requirement of this Direction. This approach, along with preliminary consultation with OEH, is supported.

4.1 Acid Sulfate Soils

The site contains low risk Class 5 Acid Sulfate Soils (ASS). It is considered that any risk associated with these soils can be adequately dealt with by appropriate ASS provisions in the PSLEP 2000 or PSLEP 2012 during development assessment.

4.4 Planning for Bushfire Protection

The subject site contains Bushfire Fire Prone land. Council is to consult with the Commissioner of the NSW Rural Fire Service prior to undertaking community consultation, and take into account any comments made as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.

Environmental social
economic impacts :

ENVIRONMENTAL

The subject site is predominately covered in native vegetation. This 11ha of vegetation is identified as consisting of a 'Coastal Sand Apple – Blackbutt Forest' community. The community is not listed as an Endangered Ecological Community, however the supporting ecological report identified the possibility of the land containing threatened species.

Part of the land is proposed to be rezoned to 7(a) Environmental Protection. Council advises that additional environmental impacts associated with the loss of native vegetation from the proposed residential zone can be addressed through biodiversity offsetting.

It is recommended that the Office of Environment and Heritage (OEH) be consulted on the significance of loss of native vegetation discussed under S.117 2.1, and the proposed biodiversity offsetting arrangements.

The land is subject to the Native Vegetation Act and consultation with the Catchment Management Authority (CMA) is also required. The land adjoins the Tomaree National Park, and consultation with the National Parks and Wildlife Service is also recommended.

SOCIAL AND ECONOMIC

Council has undertaken a Net Community Benefit Test, and concludes that the proposal will have a net community benefit by providing an additional 14ha of land for residential development.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **24 Month** Delegation : **DG**

Public Authority Consultation - s56(2)(d) : **NSW Aboriginal Land Council
Office of Environment and Heritage
Hunter Water Corporation
Office of Environment and Heritage - NSW National Parks and Wildlife Service
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services
Transgrid**

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. :

Flora

Fauna

Bushfire

Other - provide details below

If Other, provide reasons :

In addition to the above studies, Council also proposes to undertake the following assessments:

***Utilities servicing**

***Water Management**

***Visual Amenity**

***Geotechnical**

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- *Traffic Impact
- *Cultural Heritage

Council approach to investigating these issues is supported.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
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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**
- 2.1 Environment Protection Zones**
- 4.1 Acid Sulfate Soils**
- 4.4 Planning for Bushfire Protection**

Additional Information : **The Planning Proposal should proceed subject to the following conditions:**

- 1. Council is to undertake preliminary consultation with the Office of Environment and Heritage regarding the loss of native vegetation and proposed biodiversity offset arrangements.**
- 2. Council is to undertake studies required to demonstrate the suitability of the site for residential development.**
- 3. Council is to revise and prepare appropriate mapping for the planning proposal which clearly identifies the intended land use zones (based on the outcomes of the studies above) proposed for the site. Exhibition material should include both draft Port Stephens LEP 2000 Zone maps, and draft Port Stephens LEP 2012 Land Use Zone and Minimum Lot Size maps.**
- 4. Council is to demonstrate that the planning proposal satisfies the requirements of State Environmental Planning Policy No 55 (SEPP 55) – Remediation of Land and the Contaminated Land Planning Guidelines. Council is to prepare an initial site contamination investigation to demonstrate that the site is suitable for rezoning to the proposed zone. This report is to be included as part of the public exhibition material.**
- 5. 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 is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning 2009) and 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).**
- 6. Consultation is required with the following public authorities under section 56(2)(d) of**

the EP&A Act:

- Office of Environment and Heritage
- Hunter Water Corporation
- NSW Rural Fire Service
- Hunter Water Corporation
- National Parks and Wildlife Service
- Ausgrid
- Roads and Maritime Service

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.

7. Further to Condition 5 above, Council is to consult with the Commissioner of the NSW Rural Fire Service as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection. Council is to amend the planning proposal, if necessary, to take into consideration any comments prior to the commencement of public exhibition.

8. Further to Condition 5 above, Council is to consult the Office of Environment and Heritage in relation to S117 Direction 2.1 Environmental Protection Zones. Council is to amend the planning proposal, if necessary, to take into consideration any comments prior to the commencement of public exhibition.

9. Further to Condition 5 above, Council is to consult the Roads and Maritime Service in relation to the proposed route location of the Fingal Bay Link Road, and if necessary, to take into consideration any comments prior to the commencement of public exhibition.

10. Council is to ensure that all proposed mapping amen – Remediation of Land and the Contaminated Land Planning Guidelines. Council is to prepare an initial site contamination investigation to demonstrate that the site is suitable for rezoning to the proposed zone. This report is to be included as part of the public exhibition material.

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.

Supporting Reasons :

The planning proposal is not identified in the LHRS or the draft PSPS as a new release area, but is considered to have strategic merit. The site adjoins the existing urban area of Nelson Bay, and is located only 1.2km from the town centre. The site is well positioned on the main arterial Nelson Bay Road, and lies just to the north of the proposed Fingal Bay Bypass. The non-inclusion of the site in the prepared local strategy (PSPS) is considered to be derived from a lack of strategic planning for new release areas in Nelson Bay rather than strategic unsuitability of the site for urban development. There are concerns relating the loss of environmentally sensitive land and koala habitat, as well as unconfirmed availability of infrastructure provision. It is considered that preliminary consultation with OEH regarding loss of biodiversity and offsetting arrangements will enable greater certainty if the proposal can be progressed.

Signature:



Printed Name:

KO'FLAHERTY

Date:

15-11-12