

Planning Services

Gateway Determination Report

LGA	Port Stephens
RPA	Port Stephens Council
NAME	Port Stephens Housekeeping Amendment (0 homes, 0 jobs)
NUMBER	PP_2018_PORTS_001_00
LEP TO BE AMENDED	Port Stephens Local Environmental Plan 2013
ADDRESS	Various
DESCRIPTION	Various
RECEIVED	25 January 2018
FILE NO.	EF18/1740
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to make numerous amendments to the Port Stephens Local Environmental Plan (LEP) 2013 to address administrative and minor matters that have become apparent since the commencement of the LEP 2013. The proposed amendments are deemed to be administrative in nature and generally do not require supporting studies. Council has provided both a Planning Proposal and an addendum which identifies amendments to the submitted Proposal including amendment to item 8 and removal of item 6. A condition of the Gateway determination identifies the need for Council to exhibit a single updated Planning Proposal.

Site Description

The proposal involves various private and State-owned properties across the Port Stephens LGA. Sites are in Anna Bay, Bobs Farm, Fingal Bay, Heatherbrae, Hinton, Medowie, Nelson Bay, Port Stephens, Raymond Terrace, Salt Ash, Seaham, Taylor's Beach, Tanilba Bay, Woodville, Wallalong, and Williamstown. Table 1 includes each proposed amendment item, its location/s and a summary of each proposed amendment. Individual site addresses are also listed in Table 1.

Summary of Recommendation

The proposed amendments are supported. The proposal demonstrates that the amendments relating to rezonings (Items 1-5) will reflect the correct ownership of the

sites, thereby creating land use certainty for these sites. The planning proposal provides adequate justification in accordance with State and local strategies for those amendments that involve adding permitted uses to the Land Use Tables (Items 7-9) (noting the removal of Council's request for dwelling houses to be permissible under item 8). It is expected that these amendments will create economic opportunities and tourism growth across the Port Stephens LGA, particularly in Tomago, Heatherbrae and Nelson Bay. The proposed amendments relating to split zonings (Item 10) will address map alignments resulting from recent subdivisions and cadastral map shifts. The heritage item amendments (Item 11) will ensure that heritage items are adequately identified and that the information contained in the LEP is correct, thereby strengthening heritage protection. Item 6 has been removed from the proposal by Council.

The proposal will achieve positive outcomes for Port Stephens and therefore the progression of the proposal is supported.

In summary, it is recommended that the proposal proceed with conditions:

- Minor changes required to update S 117 Directions and identification of LEP maps requiring amendment.

PROPOSAL

Objectives or Intended Outcomes

The planning proposal seeks to make housekeeping amendments to the Port Stephens LEP 2013. The proposed amendments will result in various rezonings, mapping corrections and realignments, label and property description corrections and amendments to Land Use Tables.

The proposed amendments are intended to reflect the current and anticipated land use and ownership of the sites. Proposed changes to the Land Use Tables are intended to create consistency with other Hunter LGAs as well as suitable land use flexibility within zones.

Explanation of Provisions

The proposal now involves a total of 10 proposed amendments, some of which relate to several sites (see Table 1). The proposed amendments are generally clear, however it is recommended that prior to undertaking community consultation, the proposal is updated to remove reference to Item 6, as this item is being separately addressed under section 73A of the Act.

<i>Item No.</i>	<i>Address</i>	<i>Proposed amendment</i>
1a.	2217 Nelson Bay Road, Williamtown, Lot 1 DP 665835	Rezone sites from RU2 Rural Landscape to SP2 Defence and amend the relevant Land Zoning Maps.
1b.	2119 Nelson Bay Road, Williamtown, Lot 1 DP 665836	
1c.	11A Lavis Lane, Williamtown, Lot 67 DP 753192	
1d.	14 Lavis Lane, Williamtown, Lot 3 DP 853312	

1e.	40 Lavis Lane, Williamtown, Lot 3 DP 741996	
2.	601 Cabbage Tree Road, Williamtown, Lot 1 DP 195630	Rezone land from RU2 Rural Landscape to E1 National Parks and Nature Reserve and amend the relevant Land Zoning Map.
3.	Nelson Bay Road, Tomago Road and the Pacific Highway (including Heatherbrae Bypass)	Rezone various parts of the roads from RU2 Rural Landscape to SP2 Classified Road and amend the relevant Land Zoning Maps.
4.	57 Slades Road, Williamtown, Lot 21 DP 1053667	Update the zoning label from SP2 Defence to SP2 Defence (Air Transport Facility) and amend the relevant Land Zoning Map.
5.	1 Tuncurry Close, Nelson Bay, Lot 6 Sec 4 DP 242131	Rezone land from R2 Low Density Residential to RE1 Public Recreation and amend the relevant Land Zoning Map.
7.	LGA Wide	Amend the Land Use Table for the IN1 General Industrial zone to include 'Storage premises' as permitted with consent.
8.	LGA Wide	Amend the Land Use Table for IN2 Light Industrial zone to include 'Mortuaries' and 'Recreation facilities (indoor)' as permitted with consent. <u>'Dwelling houses' was also initially proposed to be included as a permitted use in the IN2 zone however has since been removed from the proposal.</u>
9.	LGA Wide	Amend the Land Use Table for Rural Landscape zone to include 'Recreation facilities (outdoor)' as permitted with consent.
10.	Total of 24 sites (see Appendix 1)	Rezone various sites to address minor split zone map alignments and amend the relevant Land Zoning Maps.
11.	Total of 61 heritage sites (see pages 50-66 of proposal)	Correct errors in numbering, address descriptions and mapping and amend the relevant Land Zoning Maps, Lot Size Maps and Height of Buildings Maps.

Table 1 – Location of each site and proposed amendment Note: Item 6 has been removed

Item 1 (a. – e.) – Rezone Williamtown sites from RU2 Rural Landscape to SP2 Defence

Item 1 relates to five separate sites in Williamtown that have been acquired by the Australian Department of Defence (Defence) since the start of 2013 (Figure 1). Council has previously consulted with Defence in relation to the properties, which confirmed its ownership of the sites. Rezoning the sites from RU2 Rural Landscape to SP2 Defence is consistent with the zoning of other properties in Williamtown owned by Defence. The amendment will be achieved by amending the relevant Land Zoning Map.



Figure 1 – Defence-owned sites in Williamtown

Item 2 – Rezone 601 Cabbage Tree Road, Williamtown from RU2 Rural Landscape to E1 National Parks and Nature Reserve

Item 2 seeks to rezone 601 Cabbage Tree Road, Williamtown from RU2 Rural Landscape to E1 National Parks and Nature Reserve to reflect its purchase by the Minister administering the *National Parks and Wildlife Act 1974 (NSW)* (Figure 2). This will be achieved by amending the relevant Land Zoning Map. The site was purchased by the Minister for addition to the Hunter Wetlands National Park and rezoning will formalise its intended use as a National Park. The planning proposal states that the site will be rezoned from RU2 Rural Landscape to 'NP1 National Parks and Nature Reserves', however NP1 does not exist as a land zone category. The proposal should be updated to correct this reference.



Figure 2 – 601 Cabbage Tree Road, Williamtown

Item 3 - Rezone various parts of Nelson Bay Road, Tomago Road and the Pacific Highway (including Heatherbrae Bypass) from RU2 Rural Landscape to SP2 Classified Road

Item 3 seeks to rezone various sections of the regional road network, including stretches of classified roads to reflect its acquisition by the NSW Roads and Maritime Services (RMS). The proposed amendments are the result of road developments and planning undertaken by RMS and involve updating each applicable Land Zoning Map for the subject sites from RU2 Rural Landscape to SP2 Classified Road. The amendment extends across 5 separate maps that reflect the sections of the roads that require review. These are located within Heatherbrae, Williamtown West, Williamtown East area, Bobs Farm and Fingal Bay.

Item 4 – Update the zoning label from SP2 Defence to SP2 Defence (Air Transport Facility) for 57 Slades Road, Williamtown

Item 4 is proposed to reflect the site's commercial airport lease conditions between Defence and Newcastle Airport Limited. The current Land Zoning Map label will be amended from 'SP2 Defence' to 'SP2 (Air Transport Facility)' to be consistent with other nearby land that is also subject to the commercial airport lease conditions.



Figure 8 – 57 Slades Road, Williamtown

Item 5 – Rezone 1 Tuncurry Close, Nelson Bay from R2 Low Density Residential to RE1 Public Recreation

Item 5 is intended to reflect the site's existing dedication and use as public open space. The current ownership of the land is listed as the State of NSW, with Port Stephens Council as Trustee. The rezoning will create consistency of zoning with the adjoining land at 2 Karuah Close, which is already zoned RE1 Public Recreation and is listed as being owned by the State of NSW, with Port Stephens Council as Trustee.



Figure 9 – 1 Tuncurry Close, Nelson Bay

Item 7 – Amend the Land Use Table for the IN1 General Industrial zone to include ‘Storage premises’ as permitted with consent

Item 7 is intended to allow ‘storage premises’ (including ‘self-storage premises’) in the IN1 General Industrial zone. Currently these uses are only permitted with consent in the IN2 Light Industrial and B5 Business Development zones, which Council deems to be overly restrictive. This matter is further discussed within the assessment.

Item 8 – Amend the Land Use Table for IN2 Light Industrial zone to include ‘Dwelling houses’, ‘Mortuaries’ and ‘Recreation facilities (indoor)’ as permitted with consent

Allowing ‘dwelling houses’ as permissible with consent in the IN2 Light Industrial zone was initially intended to address a Council Notice of Motion on 27 October 2015. Council has since removed this component of the planning proposal, given that ‘caretaker flats’ are included as complying development in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Part 5A Commercial and Industrial (New Buildings and Additions) Code*. Prior to exhibition, the planning proposal should be updated to remove this component of Item 8.

Other items in Item 8 remain however, including to add ‘mortuaries’ and ‘recreation facilities (indoor)’ as permissible with consent in the IN2 zone, with the former being previously allowed under the Port Stephens LEP 2000.

Item 9 – Amend the Land Use Table for RU2 Rural Landscape zone to include ‘Recreation facilities (outdoor)’ as permitted with consent

Item 9 seeks to permit with consent, ‘recreation facilities (outdoor)’ in the RU2 Rural Landscape zone. Item 9 has arisen in response to a growth in inquiries from businesses seeking to establish or expand ‘recreational facilities (outdoor)’ along Nelson Bay Road.

Item 10 – Rezone various sites across the LGA to address minor split zone map alignments and amend the relevant Land Zoning Maps

Implementing Item 10 will be achieved by amending the applicable Land Zoning Map (and any associated corresponding Lot Size Map and Height of Building Map) for each identified site to reflect the existing dominant zone. Appendix 1 identifies those sites where split zone map alignments are required.

Item 11 – Correct errors in numbering, address descriptions and mapping and amend the relevant Land Zoning Maps for numerous heritage sites across the LGA

Item 11 will be implemented by making corrections to Schedule 5 'Environmental heritage' in the Port Stephens LEP 2013. Pages 50-66 of the planning proposal identify those Schedule 5 heritage items that require amending. It should be noted that no items are proposed to be added or removed from Schedule 5.

Mapping

The proposal involves amendments to several LEP map sheets. Maps showing the general location of items are provided as part of the proposal and the planning proposal addendum, however detailed mapping showing the current and proposed controls for relevant sites has not been included. The proposal indicates that detailed mapping relating to specific sites will be prepared for exhibition purposes. This approach is supported.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report but rather is the result of matters that have been raised by internal and external stakeholders since the commencement of the Port Stephens LEP 2013.

The proposal is the most appropriate means of amending the Port Stephens LEP 2013 for the proposed items.

Items 1, 2 and 3 seek to rezone various sites to reflect their recent, or intended, acquisition by government bodies. Rezoning these sites is needed to reflect the ownership and use of the sites. Similarly, Item 5 intends to rezone a property to properly reflect its ownership and use as a public reserve and to create a zoning arrangement consistent with adjoining land. Amending the applicable Land Zoning Maps by way of a planning proposal is the most appropriate means of implementing these Items.

Item 4 seeks to amend a zoning label on the relevant Land Zoning Map in order to create consistency in zoning with other nearby land that is also the subject of commercial airport lease conditions. Given that Item 4 is subject to consultation with Defence and that it results in a change of allowable uses on the site, the planning proposal, rather than a s73A amendment, is the most appropriate means for achieving the intended outcome.

Item 7 seeks to add 'storage premises' (including 'self-storage units') as permissible with consent in the IN1 General Industrial zone to provide flexibility to meet market

demand and provide associated economic and employment benefits. Council's Development Assessment and Compliance Team has requested the proposal include Item 7 due to enquiries received from potential applicants for storage premises at Heatherbrae and Tomago, indicating market demand. The proposal identifies that under the previous Port Stephens LEP 2000, there was a single industrial zoning used in the LGA, being the 4(a) Industrial General "A" Zone. Storage premises were permitted with consent within this zone and there are a number of storage premises located on land previously zoned 4(a) Industrial General "A" Zone, such as at Heatherbrae and Tomago. The proposal states that reintroducing 'storage premises' into the IN1 zone will accommodate demand for this land use, without needing to rezone land to IN2 Light Industrial and B5 Business Development.

It is considered that permitting 'storage premises' in the IN1 zone is generally consistent with the range of objectives of the zone. Storage premises are similar to 'industrial' or 'warehouse' land use and will encourage employment opportunities. Although introducing this use could contribute to some reduction in employment land for other general industry uses, it is not considered that it will jeopardise industrial land from the range of other industrial uses that can occur in the zone. It is acknowledged that storage premises are permitted in other Hunter area LEPs (Table 2) and that under the Standard Instrument LEP, 'storage premises' are not a mandated prohibition in the IN1 zone. It is therefore considered that permitting 'storage premises' in the IN1 zone is unlikely to significantly impact on the zone for other general industry and that the planning proposal is the best means for providing flexibility for the market.

Development Type	Port Stephens LEP 2013	Cessnock LEP 2011	Great Lakes LEP 2014	Lake Macquarie LEP 2014	Newcastle LEP 2012
Storage premises	Prohibited	Prohibited	Permitted with consent	Storage premises permitted Self-storage units prohibited	Permitted with consent

Table 2 – Inclusion of 'storage premises' across Hunter LGAs

Item 8 includes adding 'mortuaries' and 'recreation facilities (indoor)' as permissible with consent in the IN2 Light Industrial zone. The proposal provides that the purpose of adding 'mortuaries' to the IN2 zone is to complement 'crematorium', which is already a permitted land use in the zone. A comparison of other lower Hunter LGAs identifies that permitting 'mortuaries' with consent in the IN2 zone is consistent with other local environmental plans. Regarding 'recreation facilities (indoor)', other LGAs also permit this use within the IN2 zone. 'Indoor' recreation facilities include squash courts, indoor swimming pools, gyms, health studios, bowling alleys and other uses.

The proposal provides that including 'recreation facilities (indoor)' in the IN2 zone will have economic benefits and create greater flexibility and options for development applicants. It further provides that indoor recreation facilities are often suitable to be located within IN2-zoned areas, subject to gaining development consent, and require space and building form that is often accommodated within an industrial-type building.

Given the desire to create consistency across LGAs and flexibility within an appropriate zone, it is considered that there is sufficient justification to include Item 8 as part of the planning proposal.

Item 9 has been included in the proposal to address the growth in inquiries from businesses seeking to establish or expand 'recreational facilities (outdoor)' along Nelson Bay Road. The proposal provides that allowing 'recreational facilities (outdoor)' as permitted with consent in the RU2 Rural Landscape zone will facilitate positive social and economic effects through the creation of jobs in the outdoor tourism industry, in line with the Hunter Regional Plan 2036 and local strategies. Currently, land-based 'recreation facilities (outdoor)' are limited to B3 Commercial Core, B5 Business Development, B7 Business Park, RE1 Public Recreation and RE2 Private Recreation zones. The proposal states that these zones are limited in practical terms and a more suitable for other primary uses such as offices and shops, general business, aerospace and Defence businesses, public open space and golf courses.

Under the previous Port Stephens LEP 2000, 'recreational facilities (outdoor)' were not prohibited in the 1(a) Rural Agriculture "A" zone, which applied to the Nelson Bay Road area. Consequently, there are several tourism businesses along Nelson Bay Road, situated to take advantage of main road exposure and proximity to Nelson Bay, such as the shark and ray centre, go kart track, golf driving range, horse riding and quad biking. Currently, under the Port Stephens LEP 2013, development for recreational purposes in this area is only facilitated by site-specific additional permitted use planning proposals. It is also noted that 'recreation facilities (outdoor)' is permitted in the RU2 zone in a number of other Hunter local environmental plans (Table 3).

Given that Item 9 seeks to respond to the demand for 'recreational facilities (outdoor)' development in the Nelson Bay area in a more strategic sense than is currently occurring, it is considered that inclusion in the planning proposal is the best means to achieve its intended outcomes.

Development Type	Port Stephens	Cessnock	Great Lakes	Lake Macquarie	Maitland	Singleton
Recreation facilities (outdoor)	Prohibited	Permitted with consent	Permitted with consent	Permitted with consent	Permitted with consent	Permitted with consent

Table 3 - Inclusion of 'recreation facilities (outdoor)' across Hunter LGAs

Items 10 and 11 are included in the proposal to address various mapping alignment, numbering and address description errors. Given that these items impact on a range of properties, including private properties, a planning proposal with a public exhibition period is considered to be the most appropriate method for amending the LEP.

Finally, Council has determined that a planning proposal is not the most appropriate means for achieving the objectives of Item 6 and it has since been removed from the proposal. Council has also decided not to proceed with allowing 'dwelling houses' as

an additional permitted use in the IN2 Light Industrial zone (part of Item 8). Prior to exhibition, the proposal should be updated to reflect these changes and for clarity, remove references to them.

STRATEGIC ASSESSMENT

State

Hunter Regional Plan 2036

As the proposal predominantly involves housekeeping amendments, generally the Hunter Regional Plan 2036 (the Plan) has limited application to some of the proposed Items. Those parts of the Plan that are relevant are discussed below.

Item 7 of the proposal is consistent with Direction 24 of the Plan, which seeks to grow the employment precinct of Tomago by clustering suitable industries close to the regional transport network. Adding 'storage premises' (including 'self-storage units') as permissible with consent in the IN1 zone is unlikely to erode the functions of the Tomago and Heatherbrae employment areas, as the storage industry is industrial in nature and will not conflict with surrounding industrial land uses.

The Plan describes Port Stephens as a mix of rural land, towns, villages and coastal areas, largely focused on the Tomaree Peninsula, which is a major recreational, tourist and retirement destination. The Plan identifies that it is a priority for Port Stephens to leverage its proximity to major global gateways to generate economic growth and diversity. Nelson Bay is identified as a strategic centre with a priority to maintain it as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula. Direction 6 seeks to grow tourism and new industries in Port Stephens and Action 6.1 specifically identifies Nelson Bay Road as a place where tourism infrastructure and connectivity should be enhanced. Permitting 'recreation facilities (outdoor)' in the RU2 zone (Item 9) to respond to tourism development demand along Nelson Bay Road aligns with the Plan's priorities and vision for Port Stephens.

The Plan also recognises the value of heritage to the region and the role it plays in attracting tourism and contributing to local economies. Item 11 aligns with the Plan, as Direction 19 of the Plan outlines the importance of identifying and protecting heritage. The proposal is consistent with Direction 19, as it will ensure that Schedule 5 of the Port Stephens LEP 2013 is up to date and correctly identifies heritage items.

Regional / District

Draft Greater Newcastle Metropolitan Plan 2017

The Draft Greater Newcastle Metropolitan Plan 2013 ('the Metro Plan') identifies the importance of the Tomago employment precinct and the opportunities for economic growth. Item 7 reflects the desire to accommodate other suitable industrial uses in this locality to create flexibility for the market and jobs.

The Metro Plan also recognises the significance of tourism to Greater Newcastle's economy and the key role it plays in attracting people, jobs and tourism. Proposed Item 9 intends to grow the tourism economy of Nelson Bay. Strategy 1.7 allows for increased flexibility for new tourism proposals in local plans. By permitting 'recreation

facilities (outdoor)' in the RU2 zone, it is anticipated the Nelson Bay tourism industry will grow to reflect demand.

Local

The proposal is generally consistent with the strategic direction that is provided by Council's Integrated Plans as well as the Raymond Terrace and Heatherbrae Strategy 2015-2031 and the Nelson Bay Town Centre and Foreshore Strategy.

Raymond Terrace and Heatherbrae Strategy 2015-2031

This strategy includes actions to strengthen and grow Heatherbrae as a destination for bulky goods. Item 7, which is intended to facilitate growth of the storage industry at Tomago and Heatherbrae, is consistent with this strategy.

Nelson Bay Town Centre and Foreshore Strategy

This strategy aims to guide Nelson Bay towards becoming more attractive to tourists. The proposal is generally consistent with the strategy, as Item 9 seeks to facilitate growth of the tourism industry in the Nelson Bay area.

Section 117(2) Ministerial Directions

Council has identified a number of s 117 Directions as being relevant to the Proposal. Further analysis is provided below for those Directions where additional discussion is required before consistency can be determined or where the Proposal is inconsistent.

1.1 Business and Industrial Zones

The objective of this Direction is to encourage employment growth in suitable locations and protect employment and industrial zones. Item 7 is consistent with this Direction as it will encourage employment growth within existing zoned land at Tomago and Heatherbrae, protect and retain employment land in industrial zones and continue to support the viability of nearby Raymond Terrace. Item 8 is also consistent with this Direction. Adding 'mortuaries' and 'recreation facilities (indoor)' as permissible with consent in the IN2 zone is intended to complement the already permitted and closely related land use of 'crematoriums' and allow flexibility in the zone for suitable recreation uses that require industrial-type buildings/space. It is recommended that the Secretary agree the proposal is consistent with Direction 1.1 and that no further approval is required in relation to this Direction.

1.2 Rural Zones and 1.5 Rural Lands

The proposal is generally consistent with these Directions. Although components of Item 10 include rezoning rural land, the rezonings are considered to be minor administrative amendments and are therefore consistent with the Directions. Item 9 is also considered to be consistent with Direction 1.2, as it does not seek to rezone rural land. Item 9 is considered to be inconsistent with Direction 1.5, as it will potentially affect the promotion and protection of current and potential productive and sustainable rural economic activities. Inconsistency with Direction 1.5 can be justified and is of minor significance on the basis that the proposal is consistent with the functions and objectives of the RU2 zone and recognises the social and economic benefits of rural land use. Furthermore, compatibility of future proposed outdoor recreation facilities with surrounding rural land can be assessed against the Rural Planning Principles at the development application stage.

2.1 Environment Protection Zones

The Direction is relevant in relation to Item 10 of the proposal, which reviews and addresses minor zone/cadastral mis-alignments. For some properties, the planning proposal affects land zoned E2 Environmental Conservation or E4 Environmental Living. Due to the minor nature of these amendments there are no practical environmental benefits to retaining the split-zones in each circumstance and the amendment will not have a substantive impact on land use. The other matters addressed by the planning proposal are not relevant to this direction. It is recommended that the Secretary agree the proposal is consistent with Direction 2.1 and that no further approval is required in relation to this Direction.

2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of heritage significance. The Proposal intends to correctly identify items of heritage significance by updating Schedule 5 and associated maps of the Port Stephens LEP 2013. Correcting these errors will facilitate the conservation of heritage items through better administration of the LEP. Consistency with this Direction can be determined following consultation with OEH.

3.5 Development Near Licensed Aerodromes

This Direction applies in relation to Items 1 and 4 of the proposal, which seek to rezone Defence-owned land. Further consultation with the Department of Defence is recommended to determine consistency with this Direction.

4.1 Acid Sulfate Soils

This Direction requires an acid sulfate soils (ASS) study to be undertaken when a planning proposal will result in an intensification of land uses. As this may occur for some of the proposal Items and no study is proposed, the proposal is inconsistent with this Direction. ASS may be adequately assessed at the development application stage through existing Port Stephens LEP 2013 ASS provisions. Inconsistency with this Direction is of minor significance.

Direction 4.3 Flood Prone Land

Direction 4.3 applies because Item 11 has the potential to permit development on land that may be prone to flooding. Given that flooding can be adequately addressed by other development controls, including clause 7.3 of the Port Stephens LEP 2013, risk related to flooding is able to be assessed at the development application stage. As future development applications will vary on a site by site basis, this is considered to be a suitable approach and it is recommended that any inconsistency with the Direction is justified and is of minor significance.

4.4 Planning for Bushfire Protection

This Direction is relevant to Item 9. Adding 'recreation facilities (outdoor)' as permissible with consent in the RU2 Rural Landscape zone will permit a land use on land that may, in some instances, be bushfire prone. Future development proposals for 'recreation facilities (outdoor)' in the RU2 zone on bushfire prone land will be subject to existing development assessment controls in accordance with *Planning for Bushfire Protection 2006*. Consistency with Direction 4.4 can be determined following consultation with the NSW Rural Fire Service.

6.2 Reserving Land for Public Purposes

As the proposal will rezone existing reservations of public land (National Park estate, Defence land, roads and a public reserve – Items 1, 2, 3, and 6) Direction 6.2 applies, requiring the relevant public authority and the Secretary to agree to the change. The planning proposal addendum provides advice from some authorities which indicates their recent or intended acquisition of land. It is considered that rezoning these sites to reflect their real or intended use is appropriate. It is considered that consistency with this Direction can be determined after consultation with the relevant agencies, including Defence, OEH, RMS and DPI – Lands.

State Environmental Planning Policies

SEPP 14 Coastal Wetlands

SEPP 44 Koala Habitat Protection

SEPP 71 Coastal Protection

These SEPPs may be relevant regarding Item 9. Should a 'recreation facility (outdoor)' be proposed on land that contains coastal wetland, koala habitat or is in the coastal zone, any potential inconsistencies with the SEPPs can be addressed at the development application stage. In relation to SEPP 44, this would involve an assessment against the performance criteria in the Port Stephens Comprehensive Koala Plan of Management.

State Environmental Planning Policy (Rural Lands 2008)

This SEPP applies because the proposal will potentially affect land within an existing rural zone. Outdoor recreation developments and uses in the RU2 Rural Landscape zone may affect the promotion and protection of current and potential productive and sustainable rural economic activities. In this respect, the proposal is considered to be inconsistent with the SEPP. Inconsistency can however, be justified on the basis that the RU2 zone serves a range of functions that are not limited to agricultural production, including rural living, a range of existing approved tourist/outdoor recreation-type land uses, and scenic and environmental functions. The proposal seeks to balance the social, economic and environmental interests of the community by providing for a range of compatible land uses in the RU2 zone, which have the potential to strengthen Port Stephens' tourist economy. Given that the extent and types of impacts for future outdoor recreation developments will vary depending on the site location and type of use proposed, it is considered that these can be managed through the development application process.

SITE SPECIFIC ASSESSMENT

Social

The social effects of the planning proposal are generally limited due to the administrative nature of the proposed amendments.

Environmental

The Proposal is unlikely to have any environmental impacts.

Economic

The introduction of some uses as permissible with development consent into the IN1 General Industrial, IN2 Light Industrial and RU2 Rural Landscape zones is likely to have positive economic effects as it may stimulate additional development of these zones.

CONSULTATION

Community

Council proposes a public exhibition period of 28 days in accordance with Council's Advertising and Notification Requirements and the Department's '*A guide to preparing local environmental plans*'. A notification period of 28 is supported, given the number of amendments proposed and that the Proposal affects privately owned properties.

Agencies

Council intends to consult with the following agencies prior to public exhibition:

- NSW Rural Fire Services
- Commonwealth Department of Defence
- NSW Office of Environment and Heritage – National Parks & Wildlife
- Hunter Water Corporation
- NSW Department of Lands – Crown Lands
- NSW Department of Primary Industries – Agriculture
- NSW Roads and Maritimes Services

Consultation with these agencies is considered appropriate due to the number of agency-owned sites included in the planning proposal.

TIMEFRAME

Council anticipates that the planning proposal will be forwarded to the Department to make the Plan in December 2018. Given that the proposal is for a housekeeping amendment only, it is recommended that a 12-month completion timeframe is given. It is considered that this is an appropriate timeframe for Council to adequately undertake community consultation and finalise the necessary mapping.

DELEGATION

Council has requested the use of plan making delegations. This is supported, given the planning proposal is a housekeeping amendment primarily involving matters of local significance and that no reclassifications are proposed as part of the proposal.

CONCLUSION

The planning proposal has merit and should proceed subject to conditions. The proposal has merit because:

- the amendments relating to rezonings (Items 1-5) will reflect the correct ownership of the sites, thereby creating land use certainty for these sites;

- adequate justification in accordance with State and local strategies has been provided for those amendments that involve adding permitted uses to the Land Use Tables (Items 7-9) and it is expected that these amendments will create economic opportunities and tourism growth across the Port Stephens LGA, particularly in Tomago, Heatherbrae and Nelson Bay;
- amendments relating to split zonings (Item 10) will address map alignments resulting from recent subdivisions and cadastral map shifts and ensure the LEP mapping is up to date; and
- heritage item amendments (Item 11) will ensure that heritage items are adequately identified and that the information contained in the LEP is correct, thereby strengthening heritage protection.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree any inconsistencies with Section 117 Directions 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and / or
2. Note that the consistency with Section 117 Directions 2.3 Heritage Conservation, 3.5 Development Near Licensed Aerodromes, 4.4 Planning for Bushfire Protection and 6.2 Reserving Land for Public Purposes is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition, update the planning proposal and addendum to:
 - remove references to Item 6;
 - amend the component of Item 8 relating to 'dwelling houses' and remove references to it from the proposal; and
 - include detailed mapping for specific sites and identify those maps in the LEP that require amending.
2. Community consultation is required under sections 56(2)(c) and 57 of the 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 local environmental plans* (Department of Planning and Environment 2016).
3. Consultation is required with the following public authorities and / organisations under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:
 - NSW Rural Fire Service

- Commonwealth Department of Defence
- NSW Office of Environment and Heritage – National Parks & Wildlife
- NSW Department of Lands – Crown Lands
- NSW Department of Primary Industries – Agriculture
- NSW Roads and Maritime Services

Each public authority/organisation 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.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).
5. The timeframe for completing the LEP is to be **12 months** following the date of the Gateway determination.



21/2/2018

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