

## Section 3.22 EP&A Act submission

### Part A. Council to complete

#### Subject:

*Singleton Local Environmental Plan 2013*

Report requesting the making of amending local environmental plan under Section 3.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

#### Background:

Singleton Council resolved on 19 March 2018 (refer Attachment A), to amend Singleton Local Environmental Plan 2013 (SLEP 2013) and to request that the Minister for Planning make the plan under Section 3.22 of the EP&A Act.

The request involves the following:

1. Alterations to Schedule 5, Part 1 and Part 3, of the SLEP 2013; and
2. Remove reference to “existing holding” and “1980 holding” under Clause 4.2A.

#### **Amendments to Schedule 5, Part 1 and Part 3, of the Singleton LEP 2013**

The heritage items identified below are incorrectly referenced, incorrectly described or needs to be added to the SLEP 2013 heritage register. The amendment will not have any material effect on the ground. A detailed discussion on each of the heritage items is provided below:

- *Identifying Jerrys Plains Public School (I25), under Schedule 5, Part 1 of SLEP 2013.*

The Jerry Plains Public School was listed and classified, as being of regional significance, under Schedule 3, Part 2 of the SLEP 1996.

When the SLEP 2013 was being prepared, the Jerrys Plains Police Station was listed twice. Firstly, under its correct address (i.e. Lot 14-16, Section 4, DP 758542, 26-30 Doyle Street) and secondly, under the schools address (i.e. Lot 4, Section 7, DP 758542, 27-31 Doyle Street), which meant the school was not listed under Schedule 5, although it was marked on the Heritage Map (HER\_008A). Schedule 5, Part 1 (Item I25), should be amended by removing the reference to the police station on the school site and replacing it with the correct reference to the school. This would reflect the local significance of the school. The change to Schedule 5 relating to Item I25 is attached (refer Attachment B).

- *Identifying Neotsfield, Whittingham, under Schedule 5, Part 1, of the SLEP 2013 (item I150), as being an item of State heritage significance.*

Neotsfield (Lot 36, DP876398) was originally listed, under Schedule 3, Part 2, of the SLEP 1996, as being an item of State significance, but was not included in the adopted version of the SLEP 2013. The SLEP 2013 identifies the site as being an item of local heritage significance. Schedule 5 (item I50) should be amended to identify Neotsfield, as being an item of State significance (refer excerpt from NSW Heritage Register in Attachment C). The State Heritage Register listing and changes to Item150 are attached (refer Attachment B).

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- *Listing Baiame Cave, Milbrodale, under Schedule 5, Part 3, of the SLEP 2013 and on the Heritage Map (HER\_009), as being an item of State heritage significance.*

Baiame Cave (Lot 13, DP 1114589) was identified as of State significance for its rare indigenous rock art painting of Baiame, a legendary ancestor of the Wonnarua, the Aboriginal people who are known to be the traditional custodians of the rock art by the NSW Office of Environment and Heritage. As a result, the site has been listed on the State Heritage Register, under section 37(1) (a) of the *Heritage Act 1977* (refer Attachment D). The SLEP 2013 and associated Heritage Map should be updated to identify the State significance of Baiame Cave.

The changes to Schedule 5 and draft amending plan are attached. (refer Attachment B & E)

### **Remove the terms “existing holdings” and “1980 holding” and related sunset clause provisions, under Part 4, Clause 4.2A.**

The intent of Clause 4.2A, subclauses 3(e), 3(f), 6 and 7 is ‘*to minimise unplanned rural residential development in rural and environmental protection zones and enable the replacement of lawfully erected dual occupancies and dwelling houses in those zones*’.

If an application for development consent was not made within 12 months of the commencement of the SLEP 2013, the land ceased to be either an “existing holding” or a “1980 holding” for the purpose of subclause 3 (e) or (f), respectively.

The SLEP 2013 commenced on the 6 September 2013, which meant the clause was only applicable until the 6 September 2014. The 12 month timeframe has therefore lapsed and all reference to “existing holding” or “1980 holding” should be removed to avoid confusion.

The intended amendments to the clause is attached (refer Attachment B).

### **Why there is a need for the amendment:**

The planning proposal is not the result of a site specific strategic study or report.

Singleton Council prepared the planning proposal to correct the listing of certain heritage items and add recent listing on the State Heritage Register. The amendments to the SLEP heritage register will result in correct and up-to-date information being made available to Council staff and the general public. This will ensure that the integrity of the relevant heritage items is protected.

The proposal also includes the removal of the transitional clause that were included to retain existing holding provisions for 12 months after the commencement of the SLEP 2013. As the period lapsed in 2014, these provisions are no longer required.

### **What the amendment does:**

The amendment seeks to:

1. Amend Schedule 5, Part 1 and Part 3, of the Singleton LEP 2013; and
2. Amend Clause 4.2A to remove reference to “existing holdings” and “1980 holding”.

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### Why the amending plan is suitable to be made in accordance with section 3.22:

Section 3.22 of the *Environmental Planning and Assessment Act 1979* provides for expedited amendments of environmental planning instruments, where the amendments are to:

- (a) *correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,*
- (b) *address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature,*
- (c) *deal with matters that the Minister or Greater Sydney Commission considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.*

It is considered that the changes to Items I25 and I150, listed under Schedule 5 of the SLEP 2013, will correct misdescriptions of these heritage items. The inclusion of Baiame Cave into Schedule 5 is consequential to SLEP 2013 as the site was recently identified as State significant.

The removal of the sunset provision contained within clause 4.2A of SLEP 2013 can be described as transitional and the amendments are consistent with the provisions of Section 3.22(b) of the EP&A Act.

The amendments will correct obvious errors of a minor nature. The amendments will not result in any adverse effect on the surrounding land.

In earlier discussions, the Department of Planning and Environment acknowledged that application of Section 3.22 of the *Environmental Planning and Assessment Act 1979* was appropriate.

The council requests that the Minister agree to make draft *Singleton Local Environmental Plan 2013*.

Signed:



Date: 7 May 2018

Name: Sarah Hyatt

Position: Coordinator Development Assessment

On behalf of: Singleton Council



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### Part B. Department of Planning use only

**Date of referral to Gateway:** ..... (Insert date)

**Department position:**

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 3.22 (see advice tagged 'A').

**Parliamentary Counsel opinion:**

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

**Recommendation:**

It is recommended that the Minister:

- (a) under sections section 3.22 of the *Environmental Planning and Assessment Act 1979* make .....tagged 'B')  
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date: .....

Signed: ..... Name: .....

Position: .....  
for Secretary