

Planning Services

Gateway Determination Report

LGA	Newcastle
RPA	Newcastle City Council
NAME	Fort Wallace
NUMBER	PP_2018_NEWCA_003_00
LEP TO BE AMENDED	Newcastle Local Environmental Plan 2012
ADDRESS	338 Fullerton Street Stockton
DESCRIPTION	Lots 100 and 101 in DP 1152115
RECEIVED	12 December 2017
FILE NO.	SF/FA642133
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

To rezone the Fort Wallace site from SP2 Infrastructure (Defence) to R2 Low Density Residential, RE2 Private Recreation and E3 Environmental Management and amend controls relating to building height, lot size and heritage.

Site Description

The Fort Wallace site is located on the Stockton Peninsula, north of the township of Stockton. It is legally described as Lots 100 and 101 in DP 1152115 and has an area of approximately 32 hectares. Refer to Figure 1 below.

The site is a former Australian Defence Force base and training facility. It was constructed in 1912-13 as the third fort for the defence of Newcastle. It has a significant military history and contains remnant defence buildings and gun emplacements. A number of items are listed on the Commonwealth Heritage List. Defence activity ceased on the site in 2003.

The site has undulating topography with a mix of areas of native regrowth vegetation, weed infested areas and a highly modified landform due to its previous defence uses. Parts of the site provide elevated views over the Hunter River to the west and the Pacific Ocean to the east. The eastern part of the site is a degraded coastal dune system, subject to coastal erosion.



Figure 1: Site Map

Surrounding Area

The site is bounded by the Stockton Centre (health care facility) to the north, a redundant water treatment works to the south, Fullerton Road and the Hunter River to the west, and Stockton Beach to the east. The Hunter River contains nationally recognised (Ramsar) wetlands.

Stockton town centre is approximately 3 kilometres to the south of the site. The Stockton ferry terminal provides access to the Newcastle CBD on the southern side of the Hunter River. Newcastle city centre is a 20 to 30 minute car trip from the site via Stockton Bridge.

The land surrounding the site has been utilised for a number of special-use facilities, and is undergoing change. The Stockton Centre lies to the north. Beyond that is a cemetery and a former rifle range that has also been acquired by Defence Housing Australia (DHA) for defence housing purposes.

Summary of Recommendation

It is recommended that the planning proposal proceed to public exhibition, subject to conditions. The planning proposal must be updated prior to exhibition to:

- address the requirements of the new Section 9.1 Direction 2.2 Coastal Management
- remove references to repealed State Environmental Planning Policies (SEPP), SEPP 14 (Coastal Wetlands) and SEPP 71 (Coastal Protection) and address the requirements of State Environmental Planning Policy (Coastal Management) 2018

- replace the draft Lot Size Map with a new map reflecting the updated information provided by Council.

PROPOSAL

Objectives or Intended Outcomes

The objective of the planning proposal is to amend Newcastle Local Environmental Plan 2012 (NLEP 2012) to allow a diversity of housing on those parts of the site that are cleared or highly disturbed due to previous defence related uses. Approximately 100 dwellings are proposed. The remainder, and majority, of the site will be maintained for environmental protection and enhancement purposes, including appropriate recreational uses incorporating adaptive re-use of heritage items on site.

The site has been acquired by the Defence Housing Authority to provide housing for defence personnel and families. The Williamstown RAAF base is located approximately 15 kilometres to the north.

Explanation of Provisions

The planning proposal proposes to amend NLEP 2012 by:

- Rezoning the land from SP2 Infrastructure (Defence) to part R2 Low Density Residential, part RE2 Private Recreation and part E3 Environmental Management
- Introducing height of building and lot size controls for the site
- Mapping general, archaeological and landscape heritage items across the site and listing these items in Schedule 5 of NLEP 2012.

The provisions proposed by council are clear other than for lot size provisions. Council proposed a complicated, parcel by parcel lot size map, with minimum lot sizes varying from 6000m² to 400m² over the residential component of the land. A different minimum lot size was applied to the different development typologies set out in the concept plan. The planning proposal explains that the intent for the detached, attached and multi-dwelling housing components of the site is to permit a minimum lot size of 200 m² by applying clause 4.1A Exceptions to minimum lot size, where a combined development and subdivision application would be lodged to create multiple lots, or by applying clause 4.6 Exceptions to development standards.

It is considered that this approach poses several risks in its practical application. Discussion with Council staff sought an alternative approach that would still deliver the outcomes sought by Council. Council has agreed to a much simpler lot size map, with larger lot sizes for residential flat building and townhouse super-lots, where individual dwellings will be strata subdivided, and a 200m² minimum lot size applied to the remainder of the site, where detached and attached dwellings are intended. Amendment to the planning proposal to facilitate this change will be required as a condition of the Gateway Determination.

The Department also sought clarification from council regarding selection of the RE2 Private Recreation Zone for the 'community park' identified in the concept plan and draft DCP provisions accompanying the planning proposal. The proposal suggests that this area will be accessible to the general public, in which case an RE1 Public recreation zone would be more appropriate. Council has advised that future

management of publicly accessible spaces on the site is being negotiated with DHA, and that final agreement about land management and potential dedication of land to council for open space purposes has not yet been reached. It was agreed with the council that the Gateway Determination will be conditioned so that the community park can be exhibited as either RE1 Public Recreation or RE2 Private Recreation, depending on the final land ownership and management agreements reached.

Mapping

The proposal includes changes to the Land Zoning, Height of Building, Lot Size and Heritage Maps applying to the land. Other than agreed changes to the Lot Size Map described above, the maps are suitable for public consultation.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is justified by council as necessary to provide additional housing for Defence members and their families through the DHA, provision of privately owned housing, and to allow the remainder of the site to be used for recreational purposes and protection or enhancement of the natural environment and heritage items contained on the site. The land is currently zoned SP2 Infrastructure (Defence) which limits any use of the land to Defence purposes.

The site is now vacant, non-operational and inaccessible to the public. Defence ceased activity on the site in 2003. The most recent use of the site was accommodation for the Australian Navy.

The site is now owned by DHA and use of the site for Defence housing purposes is considered appropriate given its former use and its proximity to the Williamtown RAAF base, the Stockton commercial centre and the Newcastle City Centre.

While the planning proposal is not the result of a strategic study or report, the LEP amendment is required to facilitate new DHA and private housing, facilitate associated rehabilitation of natural areas and heritage items on site, and to permit public access to recreational and (heritage) tourism related activities on the land. The proposal will facilitate housing diversity. The Stockton housing market is dominated by single dwelling houses yet has a rapidly growing lone person household cohort. The mix of housing types proposed for the site will provide options for this cohort.

STRATEGIC ASSESSMENT

Regional / District

Hunter Regional Plan 2036 (HRP):

The Vision and a number of goals directions and actions of the HRP relevant to, and referenced in, the planning proposal.

Vision: The leading regional economy in Australia with a vibrant new metropolitan city at its heart.

Defence is an important growth sector in the Hunter economy. The planning proposal supports the sector by providing housing for defence personnel through DHA.

Direction 7: Develop advanced manufacturing, defence and aerospace hubs.

The Australian Government is seeking to grow the defence and aero-space industries in and around the Williamstown RAAF base. At least 50% of the housing facilitated through the planning proposal will be used by defence force personnel and their families, through DHA.

Direction 9: Grow tourism in the region.

The HRP identifies coastal areas as some of the most visited parts of the region. While final land management and access agreements between DHA and Newcastle are still being finalised, the proposal seeks to provide public access to rehabilitated coastal lands, adaptively re-used heritage items, to be used by visitors to the site and residents, and connections to natural attractions to the north and south of the site. Action 9.2 encourages tourism development in natural areas that support conservation outcomes. The E3 Environmental Management zone proposed for the majority of the site, and proposals for public access to natural and heritage features, supports the Direction and Action.

Direction 14: Protect and connect natural areas.

The subject land is close to the “Watagan to Stockton Link” biodiversity corridor. Much of the site has been cleared or disturbed through previous defence uses but still provides habitat for fauna species including migratory birds. Residential development will be located on relatively small pockets of cleared and highly disturbed land. The remainder of the site will be zoned E3 Environmental Management which will provide protection for the land while it is managed and rehabilitated for conservation and tourism purposes. The ecology report accompanying the planning proposal identifies strengthening of North-south and east-west ecological links through the zoning and concept plan proposals for the site.

Direction 16: Increase resilience to hazards and climate change:

The eastern part of the subject land is subject to coastal erosion. All development will be located on the western part of the site, westward of the 2100 'unlikely' hazard line.

Direction 17: Create healthy built environments through good design:

The Urban Design Guideline and concept plan supporting the planning proposal identify active transport opportunities to link the site to existing cycleways and walking trails and to provide new links to future development proposed to the north. These support delivery of this direction for the site.

Direction 19: Identify and protect the region's heritage.

Former defence buildings and fixtures on the site are of national heritage significance, and are listed on the Commonwealth Heritage List. The planning proposal includes a heritage map for the site that will identify the entire site as an archaeological item, list other buildings and emplacements as general heritage items, and list one tree, the Gunner Hoban Tree, as a landscape heritage item.

Direction 22: Promote housing diversity.

The concept plan and the draft DCP provisions provided to support the planning proposal identify a mix of housing types, including 3 storey apartments, courtyard and attached housing, and single detached dwellings

Local

The proposal is consistent with the high-level objectives of both the Community Strategic Plan, Newcastle 2030, and the Local Planning Strategy (LPS, July 2015). There are no specific land use proposals for the site in the LPS.

Newcastle Council and Port Stephens Council are currently jointly preparing a Fern Bay and North Stockton Strategy. The Department is part of a working group guiding its development. The strategy will guide growth and assess infrastructure and open space requirements. A draft is scheduled for completion and exhibition in the second half of 2018.

While ideally the rezoning of this land would be informed by the final, adopted strategy, progression of this planning proposal in advance of that is supported because:

- the site is highly constrained with strong links to past defence activities along the Stockton coast. It is subject to bushfire threat and coastal erosion processes. The concept plan proposes suitable development typology, and land use zonings for such a constrained site. It is unlikely that any intensification of what is currently proposed could be supported strategically or on environmental management grounds
- a main focus of the Fern Bay and North Stockton Strategy is to investigate the need for additional retail space (supermarket site) within the study area and identify an appropriate location. A Commercial Lands Analysis prepared by Hill PDA has identified preferred sites. The subject land is not one of these sites.
- The site is former defence land, acquired by DHA to provide for an identified need for additional defence housing by 2020/21. The land is within reasonable proximity of the RAAF base and both Stockton and Newcastle centres, and the residential and environmental management uses proposed for the land are appropriate for its location and constraints.

Section 9.1 Ministerial Directions

The following section 9.1 Directions are applicable:

1.4 Oyster Aquaculture: The direction applies to the land due to the nearby Hunter River Priority Oyster Aquaculture Area. The Stormwater Assessment identifies that treatment of runoff will improve the current situation on the subject land but that runoff could impact oyster growth. The Gateway Determination will require consultation with the Department of Primary Industries, as set out in the direction. Consistency with the direction will be determined through this consultation.

2.1 Environment Protection Zones: The planning proposal is considered consistent with the direction as it appropriately zones the majority of the site to an E3 zone to facilitate protection and conservation of environmentally sensitive areas.

2.2 Coastal Management: Consistency with this direction is to be determined through amending the planning proposal prior to exhibition and through consultation with OEH. The land is within the Coastal Zone. Specifically, it is mapped in its entirety as 'coastal environment area' and 'coastal use area' as identified by the Coastal Management Act 2016 and *State Environmental Planning Policy (Coastal Management) 2018* (the Coastal Management SEPP). A strip of land on the western-most edge of the site is also mapped as 'Proximity Area for Coastal Wetlands'.

The Coastal Management SEPP and a revised Section 9.1 direction (Coastal Management) came into effect on 3 April 2018. The planning proposal was prepared in November 2017 and therefore addresses the matters set out in the former 9.1 direction (Coastal Protection). The planning proposal is supported by a Coastal Engineering Assessment, prepared by WBM. WBM also prepared Newcastle City Council's 2016 Coastal Zone Management Plan (CZMP). Both documents rely on the same base data and background studies, and therefore identify identical immediate, 2050, and 2100 erosion and recession hazard lines. All residential development proposed on the site is westward of the 'unlikely 2100 hazard line'. This line is the typically adopted conservative standard for protection of development from coastal hazards, and the planning proposal states that this aligns with council's adopted policy and is acceptable.

Newcastle Council adopted its CZMP in November 2016. In August 2017 OEH advised that it could not be certified in its current form. Agreement has been reached between the council and OEH that the CZMP will be split into two plans; a Stockton Coastal Zone Management Plan and Newcastle Southern Beaches Coastal Zone Management Plan.

Work on the Stockton CZMP (which will include the Fort Wallace coastline) will be undertaken in two stages – an initial stage currently being developed, which will identify short to medium term strategies and which is programmed for completion and certification by the end of 2018, and a second stage which will identify longer term hazard management strategies, to be developed between 2018 and 2021 and take the form of a Coastal Management Program under the new regime described in the 2018 Coastal Management SEPP.

In the absence of a certified CZMP verifying the adequacy of the 'unlikely 2100' hazard line used to determine where development can occur on the land, it is considered that:

- prior to exhibition the planning proposal should be updated to address the matters identified in the revised section 9.1 direction
- the Gateway Determination should require consultation with OEH regarding the adequacy of the Coastal Engineering Assessment and the location of the 'unlikely 2100' hazard line.

2.3 Heritage Conservation: The planning proposal is considered consistent with the direction as it identifies Aboriginal and European heritage items and proposes protection through listing in Schedule 5 of NLEP 2012. This will provide additional protections beyond the existing Commonwealth Heritage Listing for some of the remaining military installations. The proposal is supported by a Heritage Impact

Statement and an Aboriginal Cultural Heritage and Archaeological Assessment Report.

3.1 Residential Zones: The planning proposal is considered consistent with the direction. It provides for a variety of housing types, utilises existing infrastructure and minimises the impact of residential development on the environment.

3.4 Integrating Land Use and Transport: The planning proposal is considered consistent with the direction. While not identified in a strategy for residential use, due to its previous defence uses, the land is considered a suitable location for defence force housing due to its proximity to the Williamstown RAAF base. The site has direct access to public transport on Fullerton Street. The proposal is supported by a Transport study.

4.1 Acid Sulfate Soils: The planning proposal is considered consistent with the direction.

4.4 Planning for Bushfire Protection: Part of the site is bushfire prone. The planning proposal is supported by a Bushfire Assessment Report. The report identifies that the proposed development areas can achieve BAL29 with appropriate APZs. Mapping appears to indicate that required APZs will impact on remnant vegetation (Blackbutt-Apple Forest) where the Grey headed Flying Fox was found through the Ecological Assessment.

The Gateway Determination will require consultation with the RFS, as required by direction 4.4.

5.10 Implementation of Regional Strategies: The planning proposal is considered consistent with this direction.

State Environmental Planning Policies

The following SEPPs are applicable and/or have been assessed by the council. The planning proposal was prepared in November 2017. Commencement of the Coastal Management SEPP on 3 April 2018 meant the repeal and replacement of two SEPPs that have been assessed by the council, SEPP 14 Coastal Wetlands and SEPP 71 Coastal Protection. The planning proposal makes a comment about the (then) draft Coastal management SEPP and the ability of the proposal to meet its requirements. Prior to exhibition the planning proposal should be altered to reflect SEPP changes and address relevant matters under *State Environmental Planning Policy (Coastal Management) 2018*.

Relevant SEPPs	Consistency
(Repealed) SEPP 14 Coastal Wetlands	Council has addressed consistency for coastal wetland issues under the former SEPP 14. Consistency with the coastal wetland provisions of the Coastal Management SEPP 2018 is addressed below. Council should update the planning proposal prior to exhibition to reflect changes in the status of SEPPs.

SEPP 44 Koala Habitat	The planning proposal is consistent with the SEPP. The Ecological Assessment found no koala habitat on the site.
SEPP 55 Remediation of Land	A Site Audit Statement and Report have been prepared which indicates the appropriate uses for the site. It also identifies the need to manage potential unexpected finds. Council indicates that the site has been remediated to the extent required to allow the rezoning to proceed. Confirmation is required that this applies to the zoning of land to E3 and RE1/RE2 which permits childcare facilities and the adaptive reuse of heritage buildings for uses including community purposes.
SEPP 64 Advertising and Signage	The proposal can satisfy the requirements of the SEPP.
SEPP 65 Design Quality of Residential Flat Development	The Urban Design and Landscape Guidelines and the draft DCP provisions have been drafted having regard to the SEPP and the Apartment Design Guide. The proposal can satisfy the requirements of the SEPP.
(Repealed) SEPP 71 Coastal Protection	Council has addressed coastal issues under the now repealed SEPP 71. Consistency with the requirements for coastal management areas under the 2018 Coastal Management SEPP is addressed below. Council should update the planning proposal prior to exhibition to reflect changes in the status of SEPPs.
SEPP Building Sustainability Index: BASIX 2004	The proposal can satisfy the requirements of the SEPP
SEPP Coastal Management 2018	<p>The SEPP came into force on 3 April 2018, after submission of the planning proposal to the Department. The mapping accompanying the SEPP identifies the subject land as both 'coastal environment area' and 'coastal use area'. A strip of the site along the Fullerton Street frontage is mapped as 'Proximity Area for Coastal Wetlands'.</p> <p>The findings of the Coastal Engineering Assessment accompanying the proposal are still relevant, subject to verification of the coastal hazard lines adopted by the council. Prior to exhibition, the planning proposal should be updated to delete references to SEPP 14 and SEPP 71, and address the relevant matters in the Coastal Management SEPP 2018, as set out in section 9.1 direction 2.2 Coastal Management.</p>

SITE SPECIFIC ASSESSMENT

Social

The proposal has positive social impacts. It provides for necessary defence force housing in relatively close proximity to the Williamstown RAAF base, while integrating that housing with privately owned dwellings. It provides for a diversity of housing typology and affordability.

The planning proposal proposes public access to currently inaccessible open spaces, including coastal dune systems, and access to heritage items which are proposed for protection and adaptive re-use.

Environmental

The site is significantly constrained due to a number of environment impacts, including vegetation and threatened species, bushfire hazard and coastal erosion processes. As discussed in previous sections, most of these impacts can be satisfactorily addressed through careful siting of development. The zoning plan adequately responds to the constraints in this regard. Consultation with agencies will be required prior to exhibition, regarding issues such as bushfire hazard and potential runoff impacts on nearby oyster aquaculture.

The one outstanding environmental issue relates to the response to coastal erosion processes, and the location of the 'unlikely 2100' hazard line. Council's adopted 2016 CZMP was not certified by OEH, and work is currently underway on a revised Stockton CZMP which it is hoped will be completed and submitted for certification by the end of 2018. Work on the CZMP, in consultation with OEH, can inform the progression of this planning proposal.

Economic

The planning proposal will have a positive economic impact. Defence use of the site ceased in 2003, and it is currently vacant and unused. It is inaccessible to the public. While the site is constrained as to the number of dwellings possible, additional housing will support local businesses and social and community facilities.

Existing infrastructure appears adequate to support the development outcomes described in the proposal. The potential need for upgrades to the Stockton 4 Waste Water Pump Station can be addressed at the development stage.

CONSULTATION

Community

Newcastle Council proposes to exhibit the planning proposal for 28 days. This is considered adequate. Early community consultation was undertaken by DHA and consultants in mid to late 2016, during preparation of the concept plan for the site.

Agencies

Newcastle Council has nominated the following agencies for consultation in the planning proposal:

- Rural Fire Service
- Roads and Maritime Services

- Office of Environment and Heritage (both divisions)
- Department of Primary Industries
- National Parks and Wildlife Services

These are agreed. Council should also consult with the Worimi LALC regarding Aboriginal heritage matters affecting the site.

TIMEFRAME

Council has proposed a 7 month time-frame for completion of the LEP amendment, from the time of Gateway Determination. Given the requirements for council to update the planning proposal prior to exhibition, and to consult with OEH regarding the costal management response as it concurrently reviews its CZMP for Stockton, this time-frame may not be achievable. A 12 month time-frame is recommended, to allow sufficient time for consultation with agencies and making of necessary amendments to the planning proposal prior to exhibition, and to extend the LEP completion date beyond the scheduled completion of Stage 1 of the revised Stockton CZMP.

DELEGATION

Given progression and exhibition of the planning proposal will be undertaken concurrently with progression and exhibition of the draft Fern Bay and North Stockton Strategy and the Stage 1 draft Stockton CZMP, delegation is not recommended in this instance.

CONCLUSION

The planning proposal is supported to proceed subject to conditions. While it would be ideal for current local strategic planning work (Fern Bay and North Stockton Strategy) to be complete prior to exhibition of the planning proposal, it is unlikely that this work will identify any need for change to the development outcomes proposed.

Similarly, given the significant costal erosion impacts affecting the site, it would be ideal to have a certified CZMP in place to guide appropriate location of development. However, council is proposing to have a Stage 1 Stockton CZMP submitted to OEH for certification by the end of 2018. Conditioning the Gateway Determination to:

- require consultation with OEH regarding the Coastal Engineering Assessment and the hazard responses outlined in the planning proposal; and
- requiring the final plan to be resubmitted for making (no delegation)

will provide the Department with the opportunity to satisfy itself and the Secretary that the requirements of section 9.1 direction 2.2 Coastal Management have been met.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Note that the consistency with Section 9.1 Directions 1.4 Oyster Aquaculture, 2.2 Coastal Management, and 4.4 Planning for Bushfire Protection 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 Council is to amend the planning proposal and draft maps to:
 - address the requirements of Section 9.1 Direction 2.2 Coastal management;
 - remove references to SEPP 14 (Coastal Wetlands) and SEPP 71 (Coastal Protection) and replace these with consideration of the matters required by the Coastal SEPP 2018 in relation to coastal wetlands and coastal management;
 - replace the draft Lot Size Map with the map provided by council in correspondence dated 23 March 2018;
 - include confirmation that Council considers that the proposed rezoning is consistent with the requirements of clause 6 of State Environmental Planning Policy No 55—Remediation of Land.
 - exhibit two alternatives for the proposed community park, including the RE1 Public Recreation zone and the RE2 Private Recreation zone, with the final zone to be determined depending following resolution of ownership and ongoing management of that land.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - Department of Primary Industries (Hunter River Priority Oyster Aquaculture Area);
 - Office of Environment and Heritage (coastal management and heritage matters);
 - Worimi LALC; and
 - NSW Rural Fire Service
4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should not be authorised to exercise delegation to make this plan.

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24/4/2018
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