

### Fullerton Cove Road 2 Lot Subdivision

Proposal Title : **Fullerton Cove Road 2 Lot Subdivision**

Proposal Summary : **The planning proposal seeks to enable a two (2) lot subdivision of rural land at Fullerton Cove.**

**The land is currently zoned 1(a) Rural Agriculture under Port Stephens LEP 2000. A Development Application (DA) was lodged with Council in September 2011 to subdivide the existing dual occupancy into two lots. The DA was recommended for refusal as subdivision is prohibited in rural zones under clauses 12 and 14(2) of the LEP. The planning proposal effectively seeks to enable approval of the DA.**

PP Number : **PP\_2012\_PORTS\_006\_00**

Dop File No : **12/10014**

#### Proposal Details

Date Planning  
Proposal Received : **12-Jun-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 : **456 Fullerton Cove Road**

Suburb : **Fullerton Cove**

City :

Postcode : **2318**

Land Parcel : **Lot 1 DP 997897**

#### DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

Contact Email : **dylan.meade@planning.nsw.gov.au**

#### RPA Contact Details

Contact Name : **Wonona Christian**

Contact Number : **0249800255**

Contact Email : **wonona.christian@portstephens.nsw.gov.au**

#### DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

## Fullerton Cove Road 2 Lot Subdivision

### Land Release Data

|                                                                                  |                                   |                                                            |     |
|----------------------------------------------------------------------------------|-----------------------------------|------------------------------------------------------------|-----|
| Growth Centre :                                                                  | N/A                               | Release Area Name :                                        | N/A |
| Regional / Sub<br>Regional Strategy :                                            | Lower Hunter Regional<br>Strategy | Consistent with Strategy :                                 | Yes |
| MDP Number :                                                                     |                                   | Date of Release :                                          |     |
| Area of Release (Ha) :                                                           | 0.00                              | Type of Release (eg<br>Residential /<br>Employment land) : |     |
| No. of Lots :                                                                    | 1                                 | No. of Dwellings<br>(where relevant) :                     | 2   |
| Gross Floor Area :                                                               | 0                                 | No of Jobs Created :                                       | 0   |
| The NSW Government<br>Lobbyists Code of<br>Conduct has been<br>complied with :   | Yes                               |                                                            |     |
| If No, comment :                                                                 |                                   |                                                            |     |
| Have there been<br>meetings or<br>communications with<br>registered lobbyists? : | No                                |                                                            |     |
| If Yes, comment :                                                                |                                   |                                                            |     |

### Supporting notes

Internal Supporting Notes : A meeting was held on 2 February 2012, between the DG, EDPO, Port Stephens Council staff, and the State Member of Port Stephens Craig Baumann to discuss a number of items including the subdivision of a dual occupancy on rural land at Fullerton Cove. Council advises that at the meeting the Department indicated a preference for a precinct approach which could be better strategically justified than a site specific additional use.

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 provided indicates that the planning proposal intends to permit subdivision of an existing dual occupancy into 2 lots.

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

Is an explanation of provisions provided? Yes

Comment : The explanation of provisions provided states that it is intended to amend 'Clause 62 Particular development permitted with consent' of the PS LEP 2000 by inserting subdivision as an additional permitted use at 456 Fullerton Cove Road. Subdivision would be limited to creating no more than 2 lots within existing dwelling on each lot.

### Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

\* May need the Director General's agreement

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

**Council has not identified any relevant SEPPs and Section 117 Directions. As discussed in the 'Assessment' section, the Department considers that the planning proposal is inconsistent with a number of SEPPs and Section 117 Directions.**

### Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

**Council recommends a 14 day community consultation period as it considers the proposal is of low impact.**

### 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? **No**

If No, comment :

**The planning proposal is inadequate as Council has not identified relevant SEPPs and Section 117 Directions, nor provided justification for any inconsistencies.**

### Proposal Assessment

#### Principal LEP:

Due Date : **March 2013**

Comments in relation to Principal LEP :

**The Standard Instrument Port Stephens LEP 2012 was sent to the Department as a planning proposal on 8 May 2012. The draft LEP is supported and it is expected that the planning proposal will receive a Gateway Determination in the coming weeks. The project plan associated with LEPAF indicates that the plan will be submitted to the Department for finalisation by 30 March 2013.**

**The draft LEP 2012 identifies the site as RU2 Rural Landscape Zone with a 20ha minimum lot size. It is proposed to permit Dual Occupancies in the RU2 Zone.**

**Council also proposes to introduce a local provision '7.14 Dual occupancy development in**

certain rural and environmental zones' to preserve the rural character of particular zoned (including RU2) land. This is a conversion of existing clause 14(4) from PS LEP 2000. The subdivision of the existing dual occupancy appears to be inconsistent with the intent of these provisions to cluster development.

### **Assessment Criteria**

Need for planning  
proposal :

**Council argues that the planning proposal is needed to allow subdivision of an existing detached dual occupancy. The subject site currently has an area of 14.41 ha, and it is proposed to create two lots of 4.07 ha and 10.34 ha.**

**The land is currently zoned 1(a) Rural Agriculture. Subdivision is prohibited in rural zones under clause 12 of the PS LEP 2000. A SEPP 1 variation cannot apply as subdivision is prohibited. Clause 14(2) permits the erection of dual occupancies in zone 1(a) if the lot has at least an area of 4000m<sup>2</sup>; however clause 14(6) states that subdivision of the dual occupancy is not permitted unless subdivision of the land may be undertaken otherwise.**

**A Development Application (DA) was lodged with Council in September 2011 to subdivide the land into 2 lots. The subdivision was supported by Council officers. Although the assessing officer considered that the proposal was a rural residential subdivision more suitable for a Rural Small Holdings zone and not suitable for the Rural Agriculture zone of the subject site, it was noted to be consistent with the surrounding subdivision layout. The assessment also found the proposal to be consistent with provisions of Port Stephens DCP 2007. However the DA was recommended for refusal as subdivision is prohibited under clauses 12 and 14(6) of the PS LEP 2000. The planning proposal effectively seeks to enable approval of the DA.**

## Fullerton Cove Road 2 Lot Subdivision

Consistency with strategic planning framework :

### LOWER HUNTER REGIONAL STRATEGY

The subject site is inconsistent with the Lower Hunter Regional Strategy. The subject site is located in the Watagan to Stockton Green Corridor. Although a 2 lot subdivision of existing dwellings is considered minor, the LHRS states that LEPs in the Watagan to Stockton Corridor are to provide for the on-going role of biodiversity corridor and inter-urban break. The proposed LEP does not achieve this outcome.

### SECTION 117 DIRECTIONS and SEPPs

The planning proposal is considered inconsistent with a number of Section 117 Directions and SEPPs. Justification is not provided by Council, however it could be determined that a two (2) lot subdivision is of minor significance.

#### 1.2 Rural Zones

The planning proposal is inconsistent with this direction as by allowing subdivision of land it contains provisions that will increase the permissible density of land within a rural zone.

#### 1.5 Rural Land

The proposal is inconsistent with this direction as it is not consistent with the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008. Specifically, the proposal is inconsistent with Rural Subdivision Principles as it does not minimise rural land fragmentation, or provide consideration of the natural and physical constraints and opportunities of land.

#### 4.1 Acid Sulfate Soils

The subject site contains Class 2 acid sulfate soils. The proposal is inconsistent with this direction as by allowing subdivision, it proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps.

#### 4.3 Flood Prone Land

Although the subject site contains flood prone land, the proposal is consistent with this direction as it does not rezone land.

#### 5.1 Implementation of Regional Strategies

The proposal is inconsistent with this direction as the planning proposal allows development in the Watagan to Stockton Green Corridor and is therefore not consistent with the Lower Hunter Regional Strategy.

#### 6.3 Site Specific Provisions

The proposal is inconsistent with this direction as it allows subdivision on the relevant land and imposes requirements in addition to those already contained in the principal environmental planning instrument being amended.

#### SEPP (Rural Lands) 2008

As discussed in Section 117 Direction 1.5 Rural Land, the planning proposal is considered inconsistent with the Rural Subdivision Principles of the SEPP.

Environmental social economic impacts :

It is noted that the land contains acid sulfate soils and flood prone land, as well as being located in the Watagan to Stockton Green Corridor. However as the planning proposal seeks a 2 lot subdivision of an existing detached dual occupancy, it is considered that the planning proposal itself does not have any environmental, social or economic effects.

The proposal could set a precedent of rural land subdivision in the Port Stephens LGA. There could be widespread environmental, social or economic effects of allowing additional subdivision of unserviced and isolated rural land.

## Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 Month** Delegation : **DG**

Public Authority Consultation - 56(2)(d) :

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The planning proposal will not add to housing supply, as the dual occupancy is already constructed.**

**Council and the Department are currently undertaking extensive planning work developing plans to increase housing supply in areas identified in the Lower Hunter Regional Strategy and Port Stephens Planning Strategy. Proceeding with this proposal will effect delivery of other plans consistent with the agreed strategic direction.**

**It is considered that allowing subdivision will set a precedent which will result in further fragmentation of rural land. Although the majority of surrounding lots are below 20 ha, the subdivision of the subject site will result in an even smaller lot size, inconsistent with the objectives of the rural zone. There is potential for nearby lots to construct a dual occupancy and seek to have the land subdivided.**

**There is no strategic justification to the planning proposal. A precinct based approach implemented through the PS LEP 2012 is preferable to a site specific amendment to PS LEP 2000. However, Council have indicated their opposition to a precinct approach as 'all other properties in this location have been subdivided and developed'. It is noted that all adjoining lots are under 20ha, and setting a lower minimum lot size could result in additional development. The locality also contain flood prone land, acid sulfate soils, wetlands and is predominately located in the Watagan to Stockton Green Corridor. Based on preliminary information, lower minimum lot sizes in the locality are not considered appropriate. A lower minimum lot size may be supported if Council provided strategic justification and undertook relevant studies.**

**The planning proposal is inconsistent with the LHRS as the subject site is located in the Watagan to Stockton Green Corridor. Although the planning proposal will have negligible effect on the corridor by only permitting subdivision, it is considered that the planning proposal could create a precedent for further development.**

**The planning proposal is inconsistent with the following SEPPs and Section 117 Directions**

- 1.2 Rural Zones**
- 1.5 Rural Land**
- 4.1 Acid Sulfate Soils**
- 5.1 Implementation of Regional Strategies**
- 6.3 Site Specific Provisions**
- SEPP (Rural Lands)**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

## Fullerton Cove Road 2 Lot Subdivision

Identify any additional studies, if required. :

If Other, provide reasons :

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

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

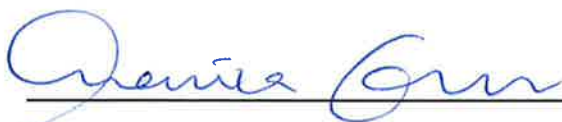
S.117 directions:

Additional Information : **That the planning proposal not proceed.**

Supporting Reasons : **There is no strategic justification for the planning proposal. Although the proposal is minor, it is inconsistent with the LHRS, SEPP (Rural Lands), and Section 117 Directions 1.2 Rural Zones, 1.5 Rural Land , 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land , 5.1 Implementation of Regional Strategies and 6.3 Site Specific Provisions. It is considered that permitting subdivision will set a precedent which will result in further fragmentation of rural land in Port Stephens LGA.**

**A precinct based approach implemented through the PS LEP 2012 is preferable to a site specific amendment to PS LEP 2000, and could be considered in conjunction with the SI LEP program.**

Signature:



Printed Name:

Maurice Gibson

Date:

22 June 2012