

Amendment to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace) 2010

Proposal Title :	Amendment to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace) 2010		
Proposal Summary :	This Planning Proposal (PP) aims to extend the Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 to include the subject land, add the E4 Environmental Living zone, insert an additional local provision to enable arrangements to be made regarding environmental protection and management on the subject land, and rezone 119.85 ha of land between Newline Road and Williams River, Kings Hill to partly E2 Environmental Conservation and partly E4 Environmental Living zones.		
PP Number :	PP_2012_PORTS_005_00	Dop File No :	12/05968

Proposal Details

Date Planning Proposal Received :	15-Jun-2012	LGA covered :	Port Stephens
Region :	Hunter	RPA :	Port Stephens Council
State Electorate :	MAITLAND	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Newline Road & Williams River		
Suburb :	Raymond Terrace	City :	Postcode : 2324
Land Parcel :	Lot 32 DP 586245, Part Lot 2 DP37430, Lot 8 & 9 DP 111433 being Zone 1(a) Rural Agriculture "A" Zone		

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Contact Number :	
Contact Email :	

Amendment to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace) 2010

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	No
MDP Number :		Date of Release :	
Area of Release (Ha) :	119.85	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	7	No. of Dwellings (where relevant) :	11
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Council resolved at its Committee Meeting on 13 March 2012 to send the Planning Proposal to the Department of Planning & Infrastructure requesting a Gateway Determination to enable amendments to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace) 2010.**

After discussions and a meeting with Council and the proponent, additional information to complete the adequacy assessment was provided by Council on 15 June 2012. Subsequently, the Regional Team requested advice from Legal Branch regarding the wording of a proposed clause in the Planning Proposal. A response was received on 20 June 2012.

Adequacy Assessment

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

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

Comment : **The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) ie. to extend the Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 to include the subject land, add a new zone, insert a new local provision, and rezone 119.85ha of land between Newline Road and Williams River, Kings Hill.**

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

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

Comment : **This Planning Proposal aims to alter the Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 including:**

**Amendment to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace)
2010**

1. Amend and extend the Land Application Map (LAP 001) of Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 to include the subject land between Newline Road and Williams River, Kings Hill. Consequently this will repeal the land being subject to the provisions within Port Stephens LEP 2000.
2. Insertion of a new zone E4 Environmental Living in the Land Use Table.
3. Amend clause 4.2A Erection of dwelling houses on land in certain rural and environmental protection zones, to permit dwellings in Zone E4 Environmental Living.
4. Amend clause 4.6(6) Exceptions to Development Standards to remove the drafting note to indicate that zone E4 applies.
5. Insert into Part 7 - Additional Local Provisions, a new clause 7.7 – Use of certain land west of Newline Road, Kings Hill, North Raymond Terrace to enable arrangements to be made regarding environmental protection and management on the subject land.
6. Amend the Lot Zoning Map (LZN 001) to enable the subject land to be rezoned from Zone 1(a) Rural Agriculture "A" Zone to partly E2 Environmental Conservation and partly E4 Environmental Living zones.
7. Amend the Minimum Lot Size Map (LSZ 001) to indicate that the subject land zoned E2 Environmental Conservation has a 40 hectare minimum lot size, and the subject land zoned E4 Environmental Living has a 2500m2 minimum lot size.
8. Amend the Acid Sulphate Soils Map (ASS 001) to include the land subject.
9. Amend the Building Heights Map (HOB 001) to include the subject land. No maximum building height is proposed for the subject land.
10. Amend the Precincts Map (PRE 001) to include the subject land. There are no precincts identified in the land subject to this PP.

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

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

- SEPP No 1—Development Standards**
- SEPP No 14—Coastal Wetlands**
- SEPP No 44—Koala Habitat Protection**
- SEPP No 55—Remediation of Land**
- SEPP (Infrastructure) 2007**

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 : **The inconsistencies have been explained later in this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Council has provided the following maps:**

- * Locality Plan**
- * Aerial Map**
- * SEPP 14 Wetland Map**
- * Prime Agriculture Land Map**
- * Acid Sulfate Soils Map**
- * Flood Prone Land Map**
- * Endangered Ecological Communities and SEPP 14 Wetland Map**
- * Existing Bushfire Prone Land Map**
- * Land Application Map**
- * Land Zoning Map**
- * Lot Size Map**
- * Precinct Map**
- * Site Identification Map**
- * Existing Zoning Map**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Council has proposed a 28 day public consultation timeframe.**
The PP will need to be exhibited in accordance with 'A guide to preparing local environmental plans'. As the proposed site has not previously been identified in the Land Application Map under PS LEP 2010 (Kings Hill, North Raymond Terrace) 2010, and will result in PS LEP 2000 no longer applying to the land, it is recommended that a 28 day public exhibition period be undertaken.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **The following section examines consistency/inconsistency with the s117 Directions:**

1.2 Rural Zones

Under cl.4(a) a PP must not rezone land from a rural zone to a residential zone. A PP may be inconsistent with the terms of this s117 Direction if the DG (or delegate) is satisfied that the provisions of the PP that are inconsistent are justified by a strategy, or justified by a study prepared in support of a PP, or is in accordance with the Lower Hunter Regional Strategy, or is of minor significance.

The PP aims to rezone the agricultural land to partly E2 Environmental Conservation and partly E4 Environmental Living zones. Consequently the proposal is not for residential purposes and is considered consistent with the s117 Direction.

1.3 Mining, Petroleum Production & Extractive Industries

Under cl.3, the s117 Direction applies if the PP would have the effect of prohibiting or restricting development of resources including coal, other minerals, and production of petroleum or extractive materials. The proposed zone and permitted land uses are likely to be incompatible with such development. Consequently, as part of the PP the planning authority must consult with the Director General of the Department of Primary Industries. Once a reply is received, the consistency with the s117 Direction can be determined.

1.5 Rural Lands

In accordance with cl.3 this s117 Direction applies when a PP will affect land within an existing or proposed rural or environmental protection zone, or changes the existing minimum lot size on land within a rural or environmental protection zone. Under cl.4 the PP must be consistent with the Rural Planning Principles and Rural Subdivision Principles listed in SEPP (Rural Lands) 2008. The PP will result in 117.4 Ha of land within Zone 1(a) Rural Agriculture 'A' Zone being rezoned. It is proposed that 119.85 Ha will be rezoned to Zone E2 Environmental Conservation but will maintain a minimum lot size of 40ha. The remaining 2.44 Ha will be rezoned from 1(a) Rural Agriculture 'A' Zone to Zone E4 Environmental Living having a minimum lot size reduced for approximately 7 lots from 40 Ha to 2500m2.

A concept subdivision plan has been submitted to Council which indicates that 3 lots of approximately 40 Ha could be developed within the proposed Zone E2 Environmental Conservation, and 4 lots of varying sizes between 2995 sqm and 8001 sqm could be developed in the Zone E4 Environmental Living. The proposed location of the dwellings is not on Prime (Class 1-3) agricultural land. The PP will enable approximately 11 low-density lifestyle dwellings (if dual occupancies were developed on all the lots in Zone E4 Environmental Living). As Council notes in the PP, the overall framework of minimum lot sizes proposed for the land provides for dwelling opportunities that takes into account the natural and physical constraints and opportunities of the land, including flood environment and existing vegetation.

A PP may be inconsistent with the terms of this Direction only if the planning authority can satisfy the DG (or delegate) that the provisions of the PP that are inconsistent are justified by a strategy which gives consideration to the objectives of this direction and identifies the land which is subject of the PP, and is approved by the DG, or is of minor significance.

2.1 Environmental Protection Zones

Under this s117 Direction, cl. 4 states that a PP must include provisions that facilitate the protection and conservation of environmentally sensitive areas. Under cl. 5, a PP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land. The PP will rezone 117.4 Ha of environmentally sensitive land containing a SEPP 14 wetland from Zone 1(a) Rural Agriculture "A' Zone to E2 Environmental Conservation. The proposal will rezone 2.44 Ha of the site to E4 Environmental Living to enable a mixture of low-density lifestyle dwellings, whilst protecting environmental assets.

A PP may be inconsistent with the terms of this s117 Direction if the DG (or delegate) is satisfied that the provisions of the PP that are inconsistent are justified by a strategy or study prepared in support of the PP which gives consideration to the objectives of this direction, or are in accordance with the Lower Hunter Regional Strategy, or is of minor significance. Council and the proponent have determined to rezone environmentally sensitive land containing a SEPP 14 wetland from Zone 1(a) Rural Agriculture "A' Zone to E2 Environmental Conservation and utilise a mechanism such as a voluntary conservation agreement over the land which will facilitate the protection and conservation of environmentally sensitive areas. Any future development of the land will require appropriate assessment to be undertaken. The PP is therefore consistent with this s117 Direction.

2.3 Heritage Conservation

In accordance with cl. 4 a PP must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage to an area, any Aboriginal objects, places or landscapes of heritage significance to Aboriginal culture and people. Council's report indicates that no known

items of European or indigenous heritage are located on the subject land. However, no specific indigenous archaeological study has been undertaken. The Port Stephens LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions which facilitate heritage conservation and protection. Consequently any future development of the land will require appropriate assessment to be undertaken in accordance with the LEP and heritage legislation. This PP is therefore consistent with this s117 Direction.

2.4 Recreation Vehicle Areas

The PP is consistent with the s117 Direction as it will not enable land to be developed for the purpose of a recreation vehicle area.

3.1 Residential Zones

The PP aims to rezone part of the land (2.44 Ha) to E4 Environmental Living to enable a mixture of low-density lifestyle dwellings, whilst protecting environmental assets. In accordance with objectives and cl. 4 and 5, the PP includes provisions that are consistent with the s117 Direction.

3.2 Caravan Parks and Manufactured Home Estates

In accordance with cl. 4(a) in identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the planning authority must retain provisions that permit development for the purposes of a caravan park to be carried out on land, and under cl. 4(b) retain zonings that would facilitate the retention of existing caravan parks. The land is presently Zone 1(a) Rural Agriculture "A" Zone which permits caravan parks under PS LEP 2000. The PP will remove the land from the application of PS LEP 2000 and include the land in PS LEP (Kings Hill, North Raymond Terrace) 2010. The land will be rezoned to partly E2 Environmental Conservation and partly E4 Environmental Living. Caravan parks are prohibited in the zones. Consequently, the PP will not facilitate future caravan developments in the locality.

Although the PP is inconsistent with the s117 Direction under the SI (Local Environmental Plans) Order 2006, caravans are not mandatory in the E2 and E4 zones; the PP is not inconsistent with the LHRS objectives and outcomes; and it is considered that within Kings Hill, environmental zones are not suitable locations for caravan parks. Consequently, in accordance with cl. 6(d) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

Under cl. 5 in identifying suitable zones, locations and provisions for manufactured home estates (MHE) in a PP, the planning authority must take into account the categories of land set out in Schedule 2 of SEPP 36, principles listed in cl 9 of SEPP 36 and include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the Community Land Development Act 1989 be permissible with consent. In accordance with SEPP 36, Schedule 2 – Categories of land excluded, cl.6 excludes land in an environmental zone, and under cl.5 land which is identified as wetlands. The PP is therefore consistent with SEPP 36 and consistent with the s117 Direction.

3.3 Home Occupations

The PP is consistent with the s117 Direction as it will not affect the provisions relating to Home Occupations.

3.4 Integrating Land Use

In accordance with the objectives and cl. 4, the PP includes provisions that are consistent with the s117 Direction.

3.5 Development Near Licensed Aerodromes

Under cl.3 the s117 direction applies when a relevant planning authority prepares a PP

that creates, alters or removes a zone relating to land in the vicinity of a licensed aerodrome. Under cl. 5(a) a PP must not rezone land for residential purposes, nor increase residential densities in areas where the ANEF exceeds 25. Council has indicated that the land is not affected by the ANEF 2012 or 2025. The PP is consistent with the s117 Direction.

4.1 Acid Sulfate Soils

Under cl.6, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing appropriateness of the change of land use given the presence of ASS. Port Stephens Council mapping indicates that the subject site includes land with Class 1-4 Acid Sulfate Soils.

The PS LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions requiring appropriate measures to be taken at the development stage to avoid adverse impacts from the presence of acid sulfate soils. Consequently, in accordance with cl. 8(b) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

4.2 Mine Subsidence and Unstable Land

In accordance with cl. 4(a) of the s117 Direction when preparing a PP that would permit development on land within a Mine Subsidence District, Council must consult with the Mine Subsidence Board. Council has indicated in the PP that the land is unaffected by mine subsidence. The PP is therefore consistent with the s117 Direction

4.3 Flood Prone Land

Under cl.3 the s117 direction applies when a relevant planning authority prepares a PP that creates, removes or alters a zone or provision that affects flood prone land. In accordance with cl.4 a PP must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and principles of the Floodplain Development Manual 2005 (including Guidelines on Development Controls on Low Risk Areas).

Council indicates that most of the land to the west of Newline Road is flood prone; however there is an area of higher land identified for proposed dwellings above the 1% AEP adjacent to Newline Road. The PS LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions regarding flood planning. Under cl.9(d) of the s117 Direction, the DG (or delegate) may agree that the extent of the inconsistencies within the provisions of the PP, are considered of minor significance.

4.4 Planning for Bushfire Protection

The subject land is identified as Bushfire Prone Land. In accordance with cl.4 and 7 of the s117 Direction, to enable examination of the consistency with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination. Once a reply is received from the NSW Rural Fire Service, the consistency of this Direction can be determined. This is to occur prior to undertaking community consultation.

5.1 Implementation of Regional Strategies

In accordance with cl. 4, a PP must be consistent with a regional strategy released by the Minister for Planning. The subject site is not identified within the Lower Hunter Regional Strategy as land defined within the Kings Hill area. The site is identified as rural and resource land on the map as per the LHRs providing valuable, economic, environmental and social benefits. The LHRs notes that dwelling entitlements in rural areas should be limited, and that maintaining or increasing lot sizes for rural subdivision that confer dwelling entitlements should occur. In this circumstance, the environmental zones will protect biodiversity and enable conservation outcomes by

facilitating seven low density lots for environmental living.

In accordance with cl. 5 of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance, and the PP achieves the overall intent of the regional strategy, and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

As this PP will release rural land that is not identified within the Lower Hunter Regional Strategy, the Minister's approval will be required for the Gateway Determination.

5.4 Commercial and Retail Development along the Pacific Highway, North Coast
This s117 Direction applies to those Council areas on the North Coast that the Pacific Highway transverses, being those Council areas between Port Stephens Council and Tweed Shire Council inclusive, and the PP is located within vicinity of the existing and/or proposed alignment of the Pacific Highway. The PP does not include new commercial or retail development and does not have frontage to the Pacific Highway. This PP is therefore consistent with this s117 Direction.

6.1 Approval and Referral Requirements

In accordance with cl.4(a) a PP must minimise the inclusion of provisions or cl.4(b) must not contain provisions that require the concurrence, consultation or referral of the development applications to a Minister or public authority unless approval has been obtained from the appropriate Minister or public authority or DG (or delegate) prior to undertaking community consultation in satisfaction of s.57 of the EP&A Act.

Council proposed a clause that consent for development would not be granted unless Council and the Office of Environment and Heritage are satisfied, whether by imposition of a condition or otherwise, that acceptable arrangements have been made for the enforceable protection and management of the subject land. This is contrary to the s117 Direction.

In general terms, to meet the requirement of 'Council's satisfaction' the Council may choose to consult with other agencies/authorities for advice throughout the PP process, therefore there is no need for a clause to specifically refer to other agencies/authorities.

Parliamentary Counsel's Office has also been reluctant in the past to draft a clause commenting on legality (ie whether an arrangement is enforceable or not is a matter for Council to ensure that whatever arrangement they enter into is enforceable), and the precise mechanism (eg. a condition of consent or some thing else), as it is difficult to determine whether this is the proper and legal mechanism.

Consequently the clause should be redrafted to be broad enough to achieve Council's intent, and also be consistent with the s117 Direction. Reference to the Office of Environment and Heritage concurrence has been removed from the clause.

6.3 Site Specific Provisions

In accordance with cl.4 of the s117 Direction, a PP that will amend another LEP in order to allow a particular development proposal, must allow land use to be carried out in the zone the land is situated; rezone the site to an existing zone that allows that land use without imposing any development standards or requirements; in addition to those already contained in the zone or existing LEP.

Council has identified a new clause to be inserted into PS LEP (Kings Hill, North Raymond Terrace) 2010 – Part 7 - Additional Local Provisions, clause 7.7 - Use of Certain land west of Newline Road, Kings Hill, North Raymond Terrace. This clause will enable

arrangements to be made regarding the environmental protection and management on the subject land.

Consequently, under cl.6 of the s117 Direction, the DG (or delegate) may agree that the extent of the inconsistencies within the provision of the PP, are of minor significance.

The following SEPPs are applicable to the PP and have been addressed in the PP:

SEPP 1 – Development Standards

In accordance with cl.3 this policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the EP&A Act. As a consequence of the inclusion of the land in Port Stephens LEP (Kings Hill, North Raymond Terrace) 2010 which will repeal the land being subject to the provisions of Port Stephens LEP 2000, the SEPP 1 will not apply and thus the PP is inconsistent with this SEPP. Instead the provisions of Port Stephens LEP (Kings Hill, North Raymond Terrace) 2010 clause 4.6 Exception to development standards will apply.

SEPP 14 – Coastal Wetlands

In accordance with cl.2, the policy aims to ensure that coastal wetlands are preserved and protected in the environmental and economic interest of the State. SEPP 14 – Coastal Wetland No. 802 is located within the western section of the subject site. Council indicates the proposed E2 Environmental Conservation zoning over the land will protect its biodiversity status and a voluntary conservation agreement under s.69 of the National Parks and Wildlife Act 1974 will facilitate related rehabilitation and land management actions. The PP is consistent with the aims and objectives of the SEPP.

SEPP 55 – Remediation of Land

In accordance with cl. 6, when preparing a draft LEP Council must consider whether the land is contaminated and be satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes on which the land in the zone concerned is permitted to be used. If remediation is required, Council needs to be satisfied that the land will be so remediated before the land is used for that purpose.

Council has indicated that Douglas Partners has undertaken preliminary examination in 2005 of the land located in the E4 zone where dwellings are likely to be located. The study identified an effluent system associated with the existing dwelling, localised fill stockpiles, bonded fibro sheeting with galvanised sheds, and localised hydrocarbon staining with galvanised sheds. In accordance with cl.6(b) of the SEPP if the land is contaminated, the planning authority must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used. In the PP Council has concluded that the potential contamination issues are likely to be minor.

SEPP 44 - Koala Habitat

In accordance with cl.3, the policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The flora and fauna studies conducted on the site identified the land to include 'preferred koala habitat', and '50m buffer over cleared' by Port Stephens Council Koala Habitat Planning Map. The identified areas are within the land proposed for conservation E2 Environmental Conservation zone. Any future development will require assessment against the Port Stephens Koala Comprehensive Plan of Management requirements. In accordance with cl. 16 of the SEPP, the Director may consider giving a direction that sections 57 and 61 of the EP&A Act are to apply to a draft local environmental plan (with the consequence that the council must prepare an environmental study of the land to

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which the draft local environmental plan applies) if, under the draft plan, it is proposed to zone (or rezone) land that is a potential koala habitat or a core koala habitat otherwise than as environment protection. The PP is consistent with the aims and objectives of the SEPP.

SEPP (Rural Lands) 2008

In accordance with cl. 2, the policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes, identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State, implement measures designed to reduce land use conflicts, identify State significant agricultural land, and to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

Council has indicated that the PP is consistent with the Rural Planning Principles and the Rural Subdivision Principles as it seeks to balance the social, economic and environmental interests of the community by protecting natural resources to maintain biodiversity protect native vegetation and recognise the importance of water resources by protecting an important riparian area and SEPP 14 wetland.

Overall adequacy of the proposal

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

If No, comment : **Sufficient information has been provided to assess the proposal in preparation of the Gateway Determination.**

Proposal Assessment

Principal LEP:

Due Date : **June 2013**

Comments in relation to Principal LEP :

Council forwarded the Principal LEP to the Department in May 2012. The Department is presently preparing the Planning Proposal in preparation of review by the Gateway LEP Panel. Consequently, this PP may occur prior to the implementation of the Principal Plan.

Assessment Criteria

Need for planning proposal :

Council resolved in March 2012 to prepare a draft amendment to Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 including to extend the Land Application Map (LAP 001) of Port Stephens LEP (Kings Hill, Raymond Terrace) 2010 to include the subject land between Newline Road and Williams River, Kings Hill. Consequently this will repeal the land being subject to the provisions within Port Stephens LEP 2000.

The PP aims to conserve land previously used for agricultural purposes but identified as environmentally significant land including SEPP 44 Koala Habitat and SEPP 14 Wetlands within an E2 Environmental Conservation zone. Council and the proponent have indicated a mechanism such as a Voluntary Conservation Agreement under s.69 of the National Parks and Wildlife Act 1974 may be appropriate to ensure conservation and rehabilitation of the land. This land has the potential for providing future biodiversity offsets in Kings Hill. The PP will also enable Council and the proponent to continue discussions with the Office of Environment and Heritage regarding the potential biodiversity offsetting and conservation arrangements within Kings Hill. The PP is considered by Council as necessary to continue facilitation of development of land within the Kings Hill urban release area.

The introduction of an E4 Environmental Living zone will permit a mixture of low-density lifestyle dwellings, whilst protecting environmental assets within the Kings Hill locality.

The introduction of an additional local provision will enable arrangements to be made

regarding environmental protection and management on the subject land.

Consistency with
strategic planning
framework :

Lower Hunter Regional Strategy (LHRS)

The subject site is not identified within the Lower Hunter Regional Strategy as land defined within the Kings Hill proposed urban area. The site is identified as rural and resource land providing valuable, economic, environmental and social benefits. The LHRS notes that dwelling entitlements in rural areas should be limited, and that maintaining or increasing lot sizes for rural subdivision that confer dwelling entitlements should occur. In this circumstance, the environmental zones will protect biodiversity and enable conservation outcomes by facilitating 7 lots for environmental living.

As this PP will rezone rural land for environmental conservation and environmental living purposes that is not identified in the LHRS, the Minister's approval is required.

Environmental social
economic impacts :

Environmental

The studies and investigations undertaken have identified that the site contains threatened species, SEPP 44 Koala habitat, and SEPP 14 wetland. The proposed E2 Environmental Conservation zone and adoption of a mechanism such as a Voluntary Conservation Agreement under s.69 of the National Parks and Wildlife Act 1974 over the land, will protect this environmentally significant area, and enable future rehabilitation of the area.

The proposed E4 Environmental Living zone provides for approximately 7 lots with dwelling entitlements whilst protecting the remaining land as E2 Environmental Conservation zone. Council is working with the proponents and Office of Environment and Heritage / Environment Protection Authority to determine mechanisms and a package that will counterbalance any clearing or loss of habitat resulting from the proposed development and other land within Kings Hill.

Flooding

As noted earlier, Council indicates that most of the land to the west of Newline Road is flood prone; however there is an area of higher land identified for proposed dwellings above the 1% AEP adjacent to Newline Road. The PS LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions regarding flood planning.

Acid Sulfate Soils

Port Stephens Council mapping indicates that the subject land includes land with Class 1-4 Acid Sulfate Soils.

The PS LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions requiring appropriate measures to be taken at the development stage to avoid adverse impacts from the presence of acid sulfate soils.

Contamination

As noted earlier, Council has indicated that Douglas Partners has undertaken preliminary examination in 2005 of the land located in the E4 zone where dwellings are likely to be located. In the PP Council has concluded that the potential contamination issues are likely to be minor.

Bushfire

The subject land is identified as Bushfire Prone Land. As Council notes in the PP any development will need to be consistent with the provisions of Planning for Bushfire Protection.

Heritage

As noted earlier, Council's report indicates that no known items of European or indigenous heritage are located on the subject land. However, no specific indigenous archaeological study has been undertaken. The Port Stephens LEP (Kings Hill, North Raymond Terrace) 2010 contains provisions which facilitate heritage conservation and protection.

Social / Economic

The proposed development will have a positive impact on protecting the environment and also enable some low-density lifestyle / environmental living allotments at the interface of

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the Kings Hill development.

Assessment Process

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

Timeframe to make LEP : **12 Month** Delegation : **Minister**

Public Authority **NSW Aboriginal Land Council**
 Consultation - 56(2)(d) **Office of Environment and Heritage**
NSW Department of Primary Industries - Minerals and Petroleum
NSW Rural Fire Service

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

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

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
Port_Stephens_Council_28-03-2012_Planning_Proposal_Section_55_Amendment_Land_West_of_Newline_Road_Raymond_Terrace_.pdf	Proposal Covering Letter	Yes
Planning Proposal - 150612 - Land west of Windeyers, Kings Hill.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**

3.4 Integrating Land Use and Transport
3.5 Development Near Licensed Aerodromes
4.1 Acid Sulfate Soils
4.2 Mine Subsidence and Unstable Land
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Additional Information :

It is recommended that:

1. Support the Planning Proposal.

2. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:

(a) the Planning Proposal be made publicly available for 28 days;
(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009)

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- * NSW Department of Primary Industries (Minerals & Petroleum)
- * NSW Rural Fire Service
- * Local Aboriginal Land Council
- * Office of Environment and Heritage / Environment Protection Authority

4. The Director General (or delegate) agree with the following section 117 Direction inconsistencies –

1.5 Rural Lands, 3.2 Caravan parks and Manufactured Home Estates, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, and 6.3 Site Specific Provisions as the inconsistency with the terms of the s117 Direction are of minor significance; 5.1 Implementation of Regional strategies is justified as the as the inconsistency with the terms of the s117 Direction are of minor significance and the Planning Proposal achieves the overall intent of the regional strategy, and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

Consultation is required with the NSW Department of Primary Industries (Minerals and Petroleum), and NSW Rural Fire Service, to determine consistency with section 117 Directions – 1.3 Mining, Petroleum Production & Extractive Industries; 4.4 Planning for Bushfire Protection respectively.

The Planning Proposal is considered consistent with s117 Directions - 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Area, 3.1 Residential Zones, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 3.5 Development Near Licensed Aerodromes, 4.2 Mine Subsidence and Unstable Land, 5.4 Commercial and Retail Development along the Pacific Highway, North Coast.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

6. The timeframe for completing the LEP is 12 months from the date of the Gateway Determination.

7. As this Planning Proposal will release rural land that is not identified in the Lower Hunter Regional Strategy, the Minister's approval is required for the Gateway Determination.

**Amendment to Port Stephens LEP 2000 & Port Stephens LEP (Kings Hill, Raymond Terrace)
2010**

8. Council should exhibit the planning proposal with sufficient information and maps to inform the community how the planning proposal will amend both the existing Port Stephens LEP (Kings Hill, North Raymond Terrace) 2010 and the draft Standard Instrument Port Stephens LEP 2012.

9. The Planning Proposal is inconsistent with s117 Direction - 6.1 Approval and Referral Requirements. Consequently, prior to public exhibition of the Planning Proposal, Council should consult with the Regional team, to redraft the proposed clause to be inserted into Port Stephens LEP 2010 (Kings Hill, North Raymond Terrace), Part 7 - Additional Local provisions, clause 7.7 - Use of certain land west of Newline Road, Kings Hill, North Raymond Terrace. Reference is to be removed from the clause that prior to development consent being granted, the concurrence/approval by the Office of Environment and Heritage for the enforceable environmental protection and management of the subject land is required.

Supporting Reasons :

The PP aims to conserve land previously used for agricultural purposes but identified as environmentally significant land including SEPP 14 wetlands within an E2 Environmental Conservation and E4 Environmental Living zone.

Council and the proponent have indicated a mechanism such as a Voluntary Conservation Agreement under s.69 of the National Parks and Wildlife Act 1974 may be appropriate to ensure conservation and rehabilitation of the land. This land has the potential for providing future biodiversity offsets in Kings Hill. The PP will also enable Council and the proponent to continue discussions with the Office of Environment and Heritage regarding the potential biodiversity offsetting and conservation arrangements within Kings Hill.

Port Stephens Council and the proponent have identified that the Biodiversity and environmental offset matters will be examined as part of the rezoning process to ensure appropriate mechanisms are undertaken to balance the residential and environmental assets of the development. The PP will enable eleven low-density lifestyle dwellings, whilst protecting environmental assets.

As this PP will rezone rural land for environmental conservation and environmental living purposes that is not identified in the LHRS, the Minister's approval is required for the Gateway Determination.

The Regional team has sought legal advice regarding insertion of the proposed clause into Port Stephens LEP 2010 (Kings Hill, North Raymond Terrace), Part 7 - Additional Local provisions, clause 7.7 - Use of certain land west of Newline Road, Kings Hill, North Raymond Terrace. Legal advice has indicated that the proposed clause is not appropriate. Consequently the clause will be redrafted to be broad enough to achieve Council's intent, and also be consistent with the s117 Direction.

The redrafted clause may state for instance:

(1) This clause applies to land at Lot 32 DP 586245, Part Lot 2 DP 37430, Lot 8 DP 1114333, and Lot 9 DP 1114333 being land west of Newline Road, Kings Hill.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that arrangements have been made for the environmental protection and management of that part of the land within the E2 Environmental Conservation Zone and E4 Environmental Living Zone.

Signature:



Printed Name:

Monica Gibson

Date:

21 June 2012