

### 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

### 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.

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.

### **Panel Recommendation**

Recommendation Date : **28-Jun-2012**

Gateway Recommendation : **Passed with Conditions**

Panel Recommendation : **The Planning Proposal should proceed subject to the following conditions:**

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

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

**2. Council is to consult with the Commissioner of the NSW Rural Fire Service, prior to the commencement of community consultation. Council is to take into account any comments made and amend the planning proposal (if necessary) as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection.**

**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 and Petroleum)**
- NSW Rural Fire Service**
- Local Aboriginal Land Council**
- Office of Environment and Heritage**
- Environment Protection Agency**

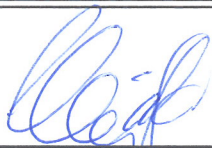
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

**4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).**

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5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Signature: \_\_\_\_\_



Printed Name: \_\_\_\_\_



Date: \_\_\_\_\_

