

Planning Services

Gateway Determination Report

LGA	Port Stephens
RPA	Port Stephens Council
NAME	Section 73 Amendment for two sites in the LGA (no additional dwellings or jobs)
NUMBER	PP_2017_PORTS_007_00
LEP TO BE AMENDED	Port Stephens LEP 2013
ADDRESS	508 Swan Bay Road, Swan Bay & 4, 6, 8 Valerie Road, Salt Ash
DESCRIPTION	Lot 1 DP 1186184 & Lot 2-4 DP 792211
RECEIVED	21 November 2017
FILE NO.	OBJ17/15413
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

The Section 73A LEP amendment seeks to make two minor amendments to the Port Stephens LEP 2013 (PSLEP). The amendments relate to two different sites in the LGA. One amendment would correct a zoning error resulting from the introduction of the Standard Instrument, the second would amend a minor misdescription in the property details.

Council's Section 73A request also includes a third item which seeks to rezone land at the Williamstown RAAF base from SP2 Infrastructure (Defence) to SP2 Infrastructure (Defence Air Transport Facility) however Council has requested that this matter not proceed. It is not discussed further in this report.

The amendments are consistent with the relevant clauses of Section 73A and the LEP amendment can be processed in accordance with that Section.

Site Description

The amendment relates to the following sites:

508 Swan Bay Road, Swan Bay – Lot 1 DP 1186184

This site is currently zoned E1 National Parks and Nature Reserves and is partly cleared of vegetation. The site is directly adjacent to E1 National Parks and Nature Reserves zoned land, however is not part of the National Park and is in private ownership.

When Council converted the planning controls from the Port Stephens LEP 2000 into the Port Stephens LEP 2013 the site was incorrectly mapped from 1(a) (Rural Agriculture “A” Zone) to E1 National Parks and Nature Reserves instead of RU2 Rural Landscape which was the equivalent zone to 1(a) in this area, and the approach taken for the adjoining privately owned land.

The surrounding area to the north is zoned RU2 Rural Landscape and is characterised by cleared or partly cleared land used for farming and rural residential purposes. The land further east and west, and directly to the south is zoned E1 National Park and Nature Reserves.

Figure 1 shows the subject site and Figure 2 shows the proposed Land Zoning Map and the RU2 zoning of the adjoining privately owned land.



Figure 1: Aerial of subject site.

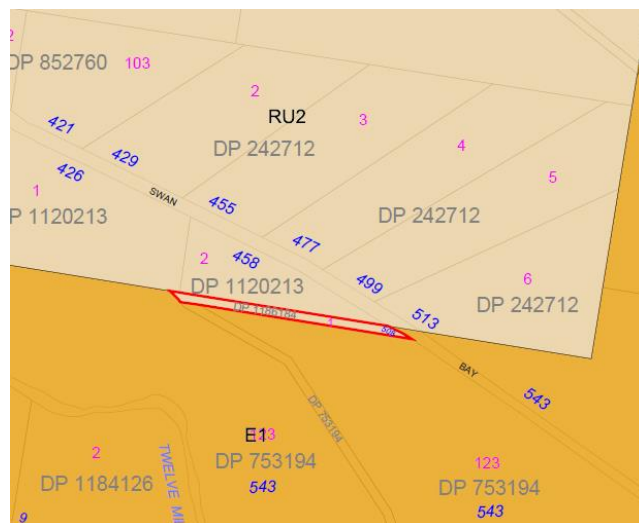


Figure 2: Proposed Land Zoning Map.

4, 6 and 8 Valerie Road, Salt Ash – Lot 2-4 DP 792211

This site is currently zoned RU2 Rural Landscape and is made up of three lots, with each containing a single dwelling.

The site is listed in Schedule 1 Additional Permitted Uses under clause 5. The lots are misdescribed as Lot 2-4, DP 79221, however the correct description is Lot 2-4, DP 792211.

Summary of Recommendation

The LEP amendment should proceed with conditions. This report recommends that both amendments be supported as they can be made under Section 73A. The Swan Bay amendment is consistent with Section 73A (1)(b) and (c) and the Salt Ash amendment is consistent with Section 73A (1)(a) and (c).

The proposed amendments would correct a mapping error of minor nature and a misdescription. The LEP amendments address matters that do not require community or agency consultation and they would not have an adverse impact on the environment or adjoining land.

The LEP amendment is consistent with the Hunter Regional Plan 2036 and the proposal is consistent with relevant Section 117 Directions.

PROPOSAL

Objectives

The objective of the LEP amendment is to correct a mapping error in the land zoning map and minimum lot size map and a minor misdescription in Schedule 1 of the Port Stephens Local Environmental Plan 2013.

Explanation of Provisions

508 Swan Bay Road, Swan Bay – Lot 1 DP 1186184

- Amend the zoning map from E1 National Parks and Reserves to RU2 Rural Landscape; and
- Amend the minimum lot size map from no minimum lot size applying to 20ha.

4, 6 and 8 Valerie Road, Salt Ash – Lot 2-4 DP 792211

- Replace description in Schedule 1(5) from Lots 2-4, DP 79221 to Lots 2-4, DP 792211.

Mapping

The proposal would result in mapping amendment to the Land Zoning Map and the Minimum Lot Size Map. The mapping provided is considered sufficient for assessment.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of specific study or strategy. Council seeks to utilise Section 73A to expedite the correction of two minor errors in the Port Stephens LEP 2013.

Department's Assessment

An assessment of the proposal indicates both amendments can be made under Section 73A as they are consistent with either clause (1)(a) or (b) and (c).

508 Swan Bay Road, Swan Bay – Lot 1 DP 1186184

The Swan Bay amendment is consistent with Section 73A (1)(b) and (c):

(b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature

The proposal notes that the site was incorrectly zoned from 1(a) (Rural Agriculture "A" Zone) to E1 instead of RU2 when the Port Stephens LEP 2013 was adopted. The amendment is considered to be of a minor nature as the site was incorrectly zoned E1 which may only apply to land identified as National Parks or Nature Reserves per the *National Parks and Wildlife Act 1974*, the land is in private ownership, it does not make up part of the adjoining National Park, and the amendment would bring the zoning and controls in line with the surrounding RU2 zoned land which was the equivalent zone to zone 1(a) in this locality.

(c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land

The amendment does not require community or agency consultation as the site is in private ownership and was incorrectly zoned to a zone that only applies to public land. Further, the proposal would not have a negative impact on the environment or on the National Park.

4, 6 and 8 Valerie Road, Salt Ash – Lot 2-4 DP792211

The Salt Ash amendment is consistent with Section 73A (1)(a) and (c):

(a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error

The amendment would correct a minor misdescription of the DP number ie replacing DP 79221 with DP 79221₁.

(c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land

The amendment does not require community or agency consultation as the error is minor and the amendment would not have negative impact on the environment or the adjoining land.

The assessment indicates the proposed LEP amendment can be made under Section 73A as an expedited amendment as the changes are minor and would not have a material impact on the ground or on the environment.

STRATEGIC ASSESSMENT

Regional

HUNTER REGIONAL PLAN 2036 (HRP)

The proposal is consistent with Goal 1 and Goal 3 of the HRP which aim to grow the regional economy and protect the biodiversity-rich natural environment. The proposal would contribute to these goals by meeting the following Directions:

- Direction 10 – Protect and enhance agricultural productivity; and
- Direction 14 – Protect and connect natural areas.

Section 117(2) Ministerial Directions

There are no s117 Directions considered to be relevant to the LEP amendment

State Environmental Planning Policies

There are no SEPPs considered to be relevant to the LEP amendment.

SITE SPECIFIC ASSESSMENT

Social

The proposed LEP amendment would not result in a negative social impact.

Environmental

The proposed amendment would not have a negative impact on environmentally sensitive lands as the subject site was incorrectly zoned E1 National Parks and Reserves instead of RU2 Rural Landscape.

Economic

The proposal would not result in additional servicing or infrastructure requirements for Council or the State.

CONSULTATION

Community

Given the minor nature the amendments can be made under Section 73A, as such community consultation is not required.

Agencies

The proposed amendments are minor and agency consultation is not required.

TIMEFRAME

The timeframe of 3 months is sufficient in this case.

DELEGATION

Council has requested plan making delegations. Given the minor nature of the proposal and the limited potential for negative impact Council should be granted making delegations.

CONCLUSION

The LEP amendment is supported to proceed with conditions as the proposed amendments would correct a minor mapping error and a misdescription, neither proposal would have a negative impact on the environment or on the adjacent land.

RECOMMENDATION

It is recommended that the delegate of the Minister for Planning, determine that the LEP amendment should proceed subject to the following conditions:

1. No community consultation is required under section 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
2. No consultation is required with public authorities.
3. 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).
4. The timeframe for completing the LEP is to be 3 months from the date of the Gateway determination.

5. Given the nature of the LEP amendment, Council should be authorised to exercise delegation to make this plan.



15/12/17
Ben Holmes
A/ Team Leader
Hunter Region



Robert Hodgkins
Acting Director Regions, Hunter
Planning Services
15/12/2017

Contact Officer: Corrine Manyweathers
Planner, Hunter
Phone: 02 4345 4404