



Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: PP_2015_PORTS_003_00 (15/04617)
Your ref: PSC2015-00703

Att: Ms Sarah Connell

Dear Mr Wallis

Planning proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to Council's letter dated 10 March 2015 and subsequent email advice of 14 May 2015, requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to:

- 1) add 'water storage facilities (farm dam)' to Schedule 2 Exempt Development for land zoned RU1 Primary Production or RU2 Rural Landscape;
- 2) expand on the current Code SEPP subdivision provisions by adding subdivision / realignment of boundary provisions to Schedule 2 Exempt Development; and
- 3) add a clause in Part 4 Principal Development Standards to enable exceptions to the minimum lot size standards in rural and environmental zones.

Council on 14 May 2015, requested the Department to progress item 1) for formal Gateway consideration. Council also advised its intention to provide further justification and information in support of item 2) and 3) as part of a separate future planning proposal. On this basis, the Department has only progressed the assessment of item 1) at this time.

As delegate of the Minister for Planning, I have now determined that item 1) of the planning proposal to add 'water storage facilities (farm dam)' to Schedule 2 Exempt Development of Port Stephens LEP 2013 should proceed subject to the conditions in the attached Gateway determination.

In preparing this future proposal relating to items 2) and 3) Council should consult the Department of Primary Industries and the Office of Environment and Heritage concerning the proposed amending subdivision / realignment of boundary provisions.

Prior to public exhibition Council is to consult with the:

- Department of Primary Industries - Office of Water, in relation to consistency of the proposed water storage facilities (farm dam) provisions with the *NSW Farms Dams Policy (Harvestable Dams Policy)* Department of Primary Industries. Council may still need to obtain the Department's approval to comply with the requirements of S117 Direction 4.3 Flood Prone Land. Council should ensure this occurs prior to the plan being made.

- Department of Primary Industries – Office of Water and the Office of Environment and Heritage about the proposed provisions relating to SEPP 14 Wetlands.
- The Hunter Water Corporation about potential impacts on the water storage catchments in the LGA.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Brian Murphy from the Hunter office to assist you. He can be contacted on (02) 4904 2712.

Yours sincerely,



16 June 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services



Gateway Determination

Planning proposal (Department Ref: PP_2015_PORTS_003_00): to add water storage facilities (farm dam)" to Schedule 2 Exempt Development.

I, the General Manager, Hunter and Central Coast Region at Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to add water storage facilities (farm dam)" to Schedule 2 Exempt Development as described in Council's Proposal, should proceed subject to the following conditions:

1. Prior to public exhibition Council is to amend the planning proposal to remove provisions and other information relating to the realignment of boundaries. This is because Council intends to provide additional justification and information to progress this matter as part of a separate future planning proposal.
2. Prior to public exhibition Council should update the planning proposal as necessary following Council's consideration of Schedule 2 Exempt Development water storage / farm dam provisions included in other Standard Instrument LEPs (e.g. Upper Hunter LEP 2013, Greater Taree LEP 2010, Port Macquarie-Hastings LEP 2011). The map identified as 'Attachment 1' is also to be included with the planning proposal and the text referring to the attachment is to be amended to remove any ambiguity about where the proposed water storage / farm dam provisions are to apply in the LGA.
3. Prior to public exhibition under section 56(2) (d) of EP&A Act and in response to relevant s117 directions and to assess impacts on water catchments consultation is required with the:
 - Department of Primary Industries - Office of Water to ensure the proposed water storage facilities (farm dam) provisions are consistent with the NSW Farms Dams Policy (harvestable Dams Policy).
 - Department of Primary Industries – Office of Water and Office of Environment and Heritage about the proposed provisions relating to SEPP 14 Wetlands.
 - Hunter Water Corporation about potential impacts on water storage catchments in the LGA.

The proposed Schedule 2 provisions and consideration of s117 Direction 4.3 Flood Prone Land and SEPP 14 Wetlands should be updated as necessary.

4. A Copy of the amended Proposal should be provided to the Department for information and comment prior to exhibition.
5. 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 is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Environment 2013) and must be made publicly available for a minimum 14 days; and

- 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 5.5.2 of A guide to preparing LEPs (Department of Planning & Infrastructure 2013).
6. 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).
7. The time-frame for completing the LEP is to be 12 months following Gateway Determination. A 12 month time-frame is recommended because of the need for council to undertake agency consultation and amend the planning proposal prior to exhibition.

Dated 16th day of June 2015.



David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_PORTS_003_00	Planning proposal to amend Port Stephens LEP 2013 to add water storage facilities (farm dam) to Schedule 2 Exempt Development.

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guideline for the preparation of local environmental plans" and "A guide to preparing planning proposals".

Dated 16th of June 2015

A handwritten signature in black ink, appearing to read "D. Rowland".

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

