



## Appendix E – Evaluation of consequences of proposed change to clause 7.9 Development subject to acoustic controls.

This Appendix contains more detailed analysis of Issue 8 (refer to **Appendix A**, but excluding the update to a document reference), as required by the Gateway Determination (**Appendix C**).

That determination required that this Planning Proposal be amended

“... to include additional information on the amount of land and number of lots that will be impacted as a consequence of the exclusion proposed under amendments to Clauses 7.5 *Koala habitat* and 7.9 *Development subject to acoustic controls*. Further, assessment of the potential impact on the uptake of complying development and any specific assessment criteria for development within these areas is to be included prior to the commencement of public exhibition.”

For additional information relating to clause 7.5 *Koala habitat* refer to **Appendix D**.

### 1. Context

#### 1.1 LEP 2011 clause 7.9

Clause 7.9 of **LEP 2011** states:

#### 7.9 Development subject to acoustic controls

- (1) The objective of this clause is to ensure that development for residential or tourist purposes, or for any other purpose involving regular human occupation, on land subject to significant exposure to noise (including road traffic noise or extractive industry crushing plant operation noise) incorporates appropriate mitigation measures.
- (2) This clause applies to the land identified as “Subject to acoustic controls” on the Acoustic Controls Map.
- (3) Before granting development consent to development on land to which this clause applies, the consent authority must:
  - (a) consider the location of the development in relation to the relevant criteria set out in:
    - (i) *Environmental Criteria for Road Traffic Noise* published by the NSW Environment Protection Authority in May 1999, and
    - (ii) *NSW Industrial Noise Policy* published by the NSW Environment Protection Authority in January 2000, and
  - (b) be satisfied that the occupants of the development will not be subject to excessive noise, and
  - (c) be satisfied that appropriate noise mitigation measures will be incorporated into the development to reduce noise to an acceptable level.

**Note:** One aspect of the proposed changes to clause 7.9 relates to updating the reference in subclause (3)(a)(i) to the current document - *NSW Road Noise Policy* published by the

Department of Environment, Climate Change and Water NSW in March 2011. This is not relevant to the evaluation in this Appendix and will not be discussed any further here.

The clause arose out of assessments of land to be rezoned for residential or industrial use, where it was considered that the land was adversely affected by road noise or quarry noise, but that with appropriate mitigation measures the land could still be used for residential or industrial use.

Identification of the land as “Subject to acoustic controls” on the Acoustic Controls Map has arisen from noise assessments and modelling for proposed residential land releases, and in one case for an industrial land rezoning adjoining a quarry at Sancrox. It is anticipated that the land identified as “Subject to acoustic controls” will be varied in the future to allow for:

- Post-rezoning development modifying the extent of the areas requiring mitigation of noise, and
- Future rezoning where land is assessed as subject to significant exposure to noise.

Mitigation measures could be acoustic mounds or fences, or acoustic insulation within external walls, and the appropriate measures could be varied based on building height or due to the mitigation provided by intervening development. The appropriate mitigation measures for any site have to be individually assessed, and any attempt to prescribe standard measures will probably lead to excessive requirements for some developments.

### 1.2 How aircraft noise is handled

In relation to aircraft noise around airports there are standards expressed in AS 2021–2000, *Acoustics—Aircraft noise intrusion—Building siting and construction*. This operates in conjunction with modelled aircraft noise exposure forecast (ANEF) contours around airports. LEP 2011 contains clause 7.8 *Development in areas subject to aircraft noise*, which refers to the relevant ANEF contour mapping - in this case within the *Port Macquarie Airport Master Plan 2010*. This clause applies to land near an airport and in an ANEF contour of 20 or greater.

Clause 7.8 of the LEP does not apply to development permitted as exempt development or complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* - the “**Codes SEPP**”.

But for the “erection of a new dwelling house or an addition to a dwelling house on land in the 20-25 ANEF contours” to be complying development under the **Codes SEPP**, clause 1.18 (2) of the SEPP requires “the development is constructed in accordance with AS 2021–2000, *Acoustics—Aircraft noise intrusion—Building siting and construction*”.

And where the land is in the 25 ANEF contour or higher, clause 1.19 (1)(h) of the Code states that complying development specified in the *General Housing Code* or the *Rural Housing Code* can only be for:

- the erection of ancillary development,
- the alteration of or an addition to ancillary development, or
- the alteration of a dwelling house.



### 1.3 Codes SEPP

The drafting of the Codes SEPP sometimes recognises that exempt development or complying development may not be appropriate, or additional requirements should apply, or other approvals are still appropriate.

Clause 1.19 of the *Codes SEPP* states, in part:

- in subclause (1)(e) - that for the *General Housing Code* and the *Rural Housing Code*, and
- in subclause (5)(f) - that for the *Commercial and Industrial (New Buildings and Additions) Code*,

complying development must not be carried out on land identified by an environmental planning instrument as being:

- (i) within a buffer area, or
- (ii) within a river front area, or
- (iii) within an ecologically sensitive area, or
- (iv) environmentally sensitive land, or
- (v) within a protected area, or

The relevant part of **Issue 8** proposes to explicitly identify that land mapped as “Subject to acoustic controls” is buffer area for the purposes of the Codes SEPP.

The zoning of the relevant land under the Codes SEPP is:

- for the *General Housing Code* and the *Rural Housing Code*:
  - Residential zones R1, R2, R3, R4 and R5, or
  - Rural zones RU1, RU2, RU3, RU4, RU5 and RU6, and
- for the *Commercial and Industrial (New Buildings and Additions) Code*:
  - Business zones B1, B2, B3, B4, B5 and B7,
  - Industrial zones IN1, IN2, IN3, IN4, or
  - Special Purpose zone SP3.

**Note:** LEP 2011 does not have a Zone RU4. Zone RU3 applies to State Forests, and does not permit dwelling houses, and therefore within this area the Rural Housing Code does not apply to land within Zone RU3.

The maps at the end of this Appendix show the land with the zonings for these Codes, and the land mapped as “Subject to acoustic controls”.

## 2. Evaluation of consequences of proposed change

The proposed change would only potentially affect complying development under:

- the *General Housing Code*,
- the *Rural Housing Code*, and
- the *Commercial and Industrial (New Buildings and Additions) Code*.

The operation of clause 7.9 is not to prohibit development, but to ensure

“... that development for residential or tourist purposes, or for any other purpose involving regular human occupation, on land subject to significant exposure to noise



(including road traffic noise or extractive industry crushing plant operation noise) incorporates appropriate mitigation measures.”

If a dwelling house is permitted, then in principle clause 7.9 is unlikely to lead to the refusal of consent. It may lead to requests for redesign or incorporation of measures to mitigate such impacts. It could lead to imposition of consent conditions relating to those measures.

In this regard, the proposed change will have negligible impact on the amount of land and number of lots that will be affected. It will have an impact on the uptake of complying development for the land specifically mapped as *Subject to acoustic controls*, but the consequence will be that a development application will be required. This means additional fees and a longer approval process, but does not lead to less development.

In relation to development under the *Commercial and Industrial (New Buildings and Additions) Code*, the only affected land is at Sancrox, adjoining a quarry. Similarly, it is not anticipated that the proposed change would prevent development - rather, it will require development applications instead of applications for complying development certificates. This means additional fees and a longer approval process, but does not lead to less development.

### 3. Specific assessment criteria

The specific assessment criteria that would apply are already contained in clause 7.9 of *LEP 2011*:

- (3) Before granting development consent to development on land to which this clause applies, the consent authority must:
  - (a) consider the location of the development in relation to the relevant criteria set out in:
    - (i) *Environmental Criteria for Road Traffic Noise* published by the NSW Environment Protection Authority in May 1999, and
    - (ii) *NSW Industrial Noise Policy* published by the NSW Environment Protection Authority in January 2000, and
  - (b) be satisfied that the occupants of the development will not be subject to excessive noise, and
  - (c) be satisfied that appropriate noise mitigation measures will be incorporated into the development to reduce noise to an acceptable level.

It is considered that no change is required to this.

**Note:** Issue 8 in **Appendix A** also proposes an update to the document referred to in subclause (3)(a)(i).

### 4. Relevant land

Map Sheets 1 to 3 on the following pages show:

1. The land currently identified as *Subject to acoustic controls* on the **Acoustics Control Map**.
2. Land currently proposed to be so identified - this is some land at Thrumster, within a separate Planning Proposal.



3. For the areas affected by the above, land having a zoning in *LEP 2011* to which under the *Codes SEPP* the following apply:
- General Housing Code
  - Rural Housing Code, and
  - Commercial and Industrial (New Buildings and Additions) Code.





