

Appendix C – Gateway Determination

A copy of the Gateway Determination for this Planning Proposal follows.

The Determination identifies processing requirements:

- consultation with 4 public authorities,
- community consultation for a minimum of 14 days, and
- timeframe for completion being 12 months from 11 March 2016 .

Gateway Determination

Planning proposal (Department Ref: PP_2016_PORTM_001_00): to undertake various housekeeping amendments and administrative refinements.

I, the Acting Director Regions, Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Port Macquarie Hastings Local Environmental Plan (LEP) (2011) to undertake various housekeeping amendments and administrative refinements should proceed subject to the following conditions:

1. Council is to consult with the NSW Rural Fire Service as per the requirements of section 117 Direction 4.4 Planning for Bushfire Protection and amend the planning proposal, if necessary to take into consideration any comments made prior to undertaking community consultation.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013)* and must be made publicly available for a minimum of **14 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 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013)*.
3. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - NSW Office of Environment and Heritage
 - NSW Roads and Maritime Services
 - NSW Environmental Protection Authority

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the 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 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).

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

Dated 4 day of March 2016



Craig Diss
Acting Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

Appendix D – Public authorities' responses

Consultation was made with the following authorities:

- Environment Protection Authority [EPA]
- Office of Environment and Heritage [OEH]
- NSW Roads and Maritime Services [RMS]
- NSW Rural Fire Service [RFS]

Responses were received from all but the EPA, and copies follow. Note that follow-up contact with OEH led to a supplementary email, which is also included.

Details of the responses are discussed with details of the Issues within **Appendix A**. This does not include where the OEH comments (for **Issues 1-5** and **8**) are to the effect:

The OEH notes that any OA for the additional permitted uses nominated would need to assess the impacts of the development taking place and provide an opportunity to minimise potential impacts on amenity, character, the environment and cultural values of the subject land.



Our Ref: DOC16/125892
Your Ref: PP2015-4.1

General Manager
Port Hastings Council
PO Box 84
Port Macquarie NSW 2444

Attention: Mr Stephen Nicholson – Senior Strategic Planner

Dear Mr Swift - McNair

**Re: Planning Proposal Port Macquarie Hastings Local Environmental Plan
Amendment No 38.**

Thank you for your letter dated 7 March 2016 regarding the Planning Proposal for various lands in Port Macquarie requesting comments from the Office of Environment and Heritage (OEH) in accordance with the provisions of section 56(2)(d) of the *Environmental Planning and Assessment Act 1979*, following a Gateway Determination issued for the proposal by the Minister for Planning. I appreciate the opportunity to provide input.

The planning proposal seeks to rectify anomalies, to update details, and to streamline the consideration of future development by removing unnecessary restrictions within *Port Macquarie-Hastings Local Environmental Plan 2011 (LEP)*.

The council identifies eight specific issues in the planning proposal, two of which are of particular interest to the OEH:

- Issue 6 – Mill Hill subdivision removal of narrow strips of E2 Environmental Conservation zoned land;
- Issue 7: Lot 123 Bronzewing Terrace, Lakewood – removal of E3 Environmental Management zoned land;

We have reviewed the documents supplied and advise that, although the planning proposal documentation was not complete, we have no concerns about OEH estate, Aboriginal cultural heritage or historic heritage.

However, a number of issues are apparent with respect to biodiversity. These issues are discussed in detail in **Attachment 1** to this letter.

With respect to the Mill Hill subdivision, we understand that the E2 zone was established to protect biodiversity values. However, subsequent development within the subdivision has resulted in the loss of many of these biodiversity values. Whilst deleting the E2 zone may be an appropriate response to the current values of the land and issues created by existing development, it does not recognise or compensate for the original intent of its application.

The OEH recommends that since the intent of the E2 zone to protect koala habitat in the Mill Hill subdivision has apparently failed, an appropriate biodiversity offset should be provided as part of the planning proposal in lieu of retaining the E2 zone.

With respect to Bronzewing Terrace at Lakewood, we understand that a residential subdivision was approved by the council under the previous residential zoning of the land and that the subsequent application of the E3 zone in the LEP was an error. Under these circumstances, the OEH has no further comment to provide on this aspect of the PP.

If you have any further questions about this issue, Mr Clyde Treadwell, Conservation Planning Officer, on 6659 8288, or via email clyde.treadwell@environment.nsw.gov.au. Please note that Clyde works Tuesday to Friday each week.

Yours sincerely

 31 March 2016

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Contact officer: CLYDE TREADWELL
6659 8288

Enclosure: Detailed OEH Comments – Port Macquarie Hastings Planning Proposal - Amendment 38 to LEP 2011

Attachment 1: Detailed OEH Comments – Port Macquarie Hastings Planning Proposal - Amendment 38 to LEP 2011

The Planning Proposal (PP) seeks to rectify anomalies, to update details, and to streamline the consideration of future development by removing unnecessary restrictions within *Port Macquarie-Hastings Local Environmental Plan 2011*.

This would involve changes, as shown below, to:

- the Land Zoning Map
- the Lot Size Map
- the Floor Space Ratio Map
- the Height of Buildings Map

There are eight specific issues the council has covered in the PP, as discussed below:

Issue 1: Zone B5 Business Development - allow Veterinary hospitals

The PP seeks that the Land Use Table for Zone B5 Business Development, in *LEP 2011*, be amended to permit *veterinary hospitals* with consent.

OEH Comment:

This matter is generally outside the OEH's statutory responsibilities. No specific comment is provided as any Development Application (DA) process would assess the potential impacts of the proposal taking place minimising impacts on amenity, character, the environment and cultural values of the subject land.

Issue 2: Clause 7.14 Eco-tourist facilities - additional provisions

The PP seeks that clause 7.14 of the LEP be amended to permit *eco-tourism* on land where a *dwelling* is permissible or where a *dwelling* currently exists on an undersized lot in a rural zone.

OEH Comment:

While this matter is generally outside the OEH's statutory responsibilities it is noted that any DA would need to address the potential impacts of the development taking place and thus minimising impacts on amenity, character, the environment and cultural values of the subject land.

Issue 3: Laurieton Men's Shed, Dunbogan

The PP seeks that the Lot Size Map in *LEP 2011* be amended to apply a minimum lot size of 8000 sq m for the leased area of the Laurieton Men's' Shed within Lot 2 DP 1083711, Diamond Head Road, Dunbogan.

OEH Comment:

This matter is outside the OEH's statutory responsibilities and no specific comment is provided.

Issue 4: Additional permitted uses - Cassegrain winery

The PP seeks the LEP be amended to make *agricultural produce industry, cellar door premises, and light industry (comprising a brewery)* permissible with consent as additional permitted uses on the land zoned SP3 Tourist (excluding the small area zoned SP3 Tourist in the southern corner) within Lot 10 DP 1185123, Fernbank Creek Road, Fernbank Creek.

OEH Comment:

The OEH notes that any DA for the additional permitted uses nominated would need to assess the impacts of the development taking place and provide an opportunity to minimise potential impacts on amenity, character, the environment and cultural values of the subject land.

Issue 5: Land zoned IN2, corner of High Street and Beechwood Road, Wauchope

The PP seeks the Land Zoning Map in *LEP 2011* be amended by rezoning to Zone B4 Mixed Use the land currently zoned IN2 Light Industrial, at the corner of High Street and Beechwood Road, Wauchope.

OEH Comment:

The OEH notes that any development permitted under the proposed zoning would require assessment and this would provide an opportunity to minimise any potential impacts on amenity, character, the environment and cultural values of the subject land.

Issue 6: E2 zoning slivers within Mill Hill subdivisions

The PP seeks that *LEP 2011* be amended in relation to the narrow strips of land zoned E2 Environmental Conservation within the Mill Hill subdivisions, Innes Peninsula, Port Macquarie:

- a) on the Land Zoning Map - apply a Zone R1 General Residential,
- b) on the Lot Size Map - apply G - 450 square metre minimum lot size,
- c) on the Floor Space Ratio Map - apply G - 0.65:1, and
- d) on the Height of Buildings Map - apply I - 8.5 metres.

OEH Comment:

PMH Council states that when State Environmental Planning Policy 44 – Koala Habitat Protection was introduced, to enhance the outcomes the council decided to protect koala habitat and movement corridors by amending the LEP to apply the 6 m wide strips of E2 Environmental Conservation zone along the frontages of most of the properties in the Mill Hill estate. Restrictions on the titles were registered for the same purpose.

The council indicates that it considers this approach has not been successful for several reasons, including:

- *siting of buildings close to the E2 zone, with the Codes SEPP and bushfire regulations overruling the LEP,*
- *driveway construction that led to removal of existing trees,*
- *disregard for the zoning restriction and the restriction on title.*

The OEH has concerns that removal of the E2 zone may still have an impact as it will become easier to remove the remaining vegetation whilst not compensating for the loss in biodiversity values. Although the proposal appears to have a minor impact on biodiversity, the council should satisfy itself

that there is a net biodiversity benefit from the PP. The council should also ensure biodiversity values are improved or maintained as a result of implementing the PP.

All impacts on biodiversity should be offset, regardless of whether it has been determined to be significant or not. The OEH advocates that all impacts on biodiversity should be adequately offset in a transparent and repeatable manner, in accordance with the 'OEH principles for the use of biodiversity offsets in NSW'. These principles have been developed by the OEH to provide the framework for considering biodiversity impacts and appropriate offset requirements and can be accessed at: <http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm>

Recommendations

The OEH recommends that since the intent of the E2 zone to protect koala habitat in the Mill Hill subdivision has apparently failed, an appropriate biodiversity offset should be provided as part of the planning proposal in lieu of retaining the E2 zone.

Issue 7: Lot 123 DP 1148180, Bronzewing Terrace, Lakewood

The PP seeks that LEP 2011 be amended in relation to part Lot 123 DP 1148180, Bronzewing Terrace, Lakewood:

- a) on the Land Zoning Map - apply a Zone R1 General Residential,
- b) on the Lot Size Map - apply G - 450 square metre minimum lot size,
- c) on the Floor Space Ratio Map - apply G - 0.65:1, and
- d) on the Height of Buildings Map - apply I - 8.5 metres.

OEH Comment:

PMH Council states that given problems with providing adequate water pressure above 30m AHD at Lakewood, LEP 2011 repositioned the boundary of the residential zone to that contour. Thus this is currently zoned E3 Environmental Management.

A consent for the subdivision of the land was granted before LEP 2011 was in force, as provided for by clause 1.8A.

The applicant is seeking to carry out the approved development, which will create residential lots which are subject to PMH Council planning controls.

The council indicates that the development is proposed to be completed and it considers it is appropriate to reinstate the previous boundary for the residential zone (as in the former Hastings LEP 2001), so that the new lots have the appropriate zone.

Under these circumstances, the OEH has no further comment to provide on this aspect of the PP

Issue 8: Subdivision of Oxley Club land, Oxley Highway Wauchope

The PP seeks that the Lot Size Map for LEP 2011 be amended, in relation to that part of Lot 2 DP 1036844, Oxley Highway Port Macquarie zoned RU1 Primary Production - to apply a minimum lot size of 10 hectares to the area south of Yippin Creek, and a minimum of 20 hectares north of Yippin Creek.

OEH Comment:

This matter is outside the OEH's specific statutory responsibilities, however the OEH notes that any DA for subdivision of the land would need to be accompanied by an assessment of the potential impacts of the subdivision and to outline mitigation measures for any impacts on amenity, character, the environment and cultural values of the subject land.

Office of Environment and Heritage email

Sent: Thursday, 14 April 2016 10:28 AM

Subject: RE: Planning Proposal - LEP Refinements Amend No 38 - Issue 6

Stephen

Further to your email of the 7 April I provide the following information.

With respect to the Mill Hill subdivision, we understand that the E2 zone was established to protect biodiversity values, including the maintenance of vegetated linkages to ensure the ongoing use of the area by koalas, which were known to occupy the Mill Hill locality prior to development consent being issued. However, subsequent development within the subdivision has resulted in the loss of many of these biodiversity values. Whilst deleting the E2 zone may be an appropriate response to the current values of the land and issues created by existing development, it does not recognise or compensate for the original intent of the application of this zone.

I note your email suggests that:

the additional documents provided illustrate that the current E2 zoning was not a KPoM requirement, but a supporting action. An action that has failed, in part due to construction works permitted by complying development.

We acknowledge that this is an inherent problem with some of the “exempt and complying development” provisions and how they are being applied throughout the state.

We also note that the original application of the environmental protection (E2) strips was as a result of the request by DUAP and required:

A further measure which should be included in Council's consent is having the six metre setbacks (provided from the road way for each 'standard' block) zoned 7(h) environmental protection. This will provide further assurance that all koala habitat trees in these areas are retained. Information presented by the proponent's consultants in Attachment Number Two indicates a willingness to explore this approach.

The E2 zone was subsequently applied under LEP 2011 as a transition from the previous 7(h) zone.

The original assessment of the subdivision also noted that it was important for the:

Identification of linkages of core koala habitat to other adjacent areas of habitat and movement of koalas between areas of habitat. Provision of strategies to enhance and manage these corridors Provision has been made in the KPOM for corridor linkages. However their value is diminished because many are relatively narrow and involve the crossing of roads. The roads themselves are also proposed to provide movement corridors.

The OEH note that Koalas are persisting within and adjacent to the Mill Hill subdivision, as there are records from 2010 of Koala occupation in the adjacent RE1 zoned parcels of land. This demonstrates that there is an ongoing need to maintain and enhance core areas of suitable habitat, habitat linkages and refuges for the movement of koalas between areas of habitat in the Mill Hill locality.

The OEH suggests that, since the intent of the E2 zone to protect koala habitat in the Mill Hill subdivision has apparently failed, the deletion of the E2 zone is likely to see the removal of all remaining habitat trees in this location, further impacting the ability to provide linkage and refuge for any future movement of Koalas or other fauna that may occur. The OEH would suggest that PMH Council consider providing some compensatory planting on suitable adjoining lands in lieu of retaining the E2 zone, in an effort to replace and enhance the provision of linkages and refuges for the movement of koalas.

The OEH would encourage Council's Biodiversity officers, representatives of the Port Macquarie Koala Hospital and OEH officers to consider the most appropriate location for plantings to provide the best opportunity to safeguard any future movement of Koalas in and through the locality.

Regards
Clyde

Clyde Treadwell
Conservation Planning Officer
Regional Operations Group
Office of Environment and Heritage
Locked Bag 914 Coffs Harbour NSW 2450



File No: NTH16/00064/08
Your Ref: DD032.2015.00000004.001

The General Manager
Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Attn: Stephen Nicholson – Senior Strategic Planner

Dear Sir / Madam

Port Macquarie-Hastings Local Environmental Plan 2011 Amendment No. 38

I refer to your email of 7 March 2016 requesting comment from Roads and Maritime Services in relation to the abovementioned planning proposal.

Roads and Maritime has reviewed the planning proposal and notes that comment is requested in relation to Issue 5, land rezoning on the corner of High Street (Oxley Highway) and Beechwood Road, Wauchope.

Roads and Maritime supports Council's view that the proposed rezoning is appropriate to facilitate business development as long as it is compatible with traffic management at the intersection.

The Wauchope Traffic Study (2012) identified decreasing intersection performance as a result of planned urban growth in West Wauchope and a need for both intersection and broader network improvements to manage peak traffic flows at the intersection.

Roads and Maritime is currently working with Council to deliver the Port Macquarie Hastings Area Wide Traffic Study. It is envisaged that the outcome of this study will further inform the findings of the Wauchope Traffic Study and assist Council in considering suitable network improvements to address future demand.

The current use of the buildings on the land identified for rezoning to IN2 in Issue 5 may adversely impact on safety at the intersection and constrain options for any future upgrade. It would be desirable to take this opportunity to introduce development controls to address access management. In particular it would be desirable to rationalise access to the Oxley Highway with a view to relocating all vehicular access to Beechwood Road.

If you have any further enquiries regarding the above comments please do not hesitate to contact Liz Smith, Manager Land Use Assessment on (02) 6640 1362 or via email at: development.northern@rms.nsw.gov.au

Yours faithfully

Monica Sirol
Network & Safety Manager, Northern Region
1 April 2016



NSW RURAL FIRE SERVICE



The General Manager
Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Your reference: PP2015-4.1
Our reference: L09/0007
DA 16031101077AB

Attention: Stephen Nicholson

8 April 2016

Dear Mr Nicholson

Agency Comment – Planning Proposal Port Macquarie LEP 2011 Amendment 38; Administrative Requirements

I refer to your letter dated 8 March 2016 seeking comments from the NSW Rural Fire Service (NSW RFS) with respect to the above Planning Proposal.

The NSW RFS has reviewed the submitted documentation and understands the Planning Proposal is to correct errors and satisfy previous development requirements in Port Macquarie Hastings Local Environmental Plan 2011 as follows:

- *Issue 1: Zone B5 Business Development - allow Veterinary hospitals*
- *Issue 2: Clause 7.14 Eco-tourist facilities - additional provisions*
- *Issue 3: Laurieton Men's Shed, Dunbogan*
- *Issue 4: Additional permitted uses - Cassegrain winery*
- *Issue 5: Land zoned IN2, corner of High Street and Beechwood Road, Wauchope*
- *Issue 6: E2 zoning slivers within Mill Hill subdivisions*
- *Issue 7: Lot 123 DP 1148180, Bronzewing Terrace, Lakewood*
- *Issue 8: Subdivision of Oxley Club land, Oxley Highway Wauchope*

The NSW RFS has no objection to the Planning Proposal proceeding and provides the following comment:

- In relation to item 3, Laurieton Men's Shed Dunbogan, the minimum lot size to permit subdivision, shall reflect the asset protection zone and construction standard recommendations of the Bushfire Hazard Assessment report, prepared by Midcoast Environmental, dated September 2010.

The NSW RFS does not require further consultation with respect to the community consultation phase of the Planning Proposal.

Postal address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

Street address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

T (02) 6691 0400
F (02) 6691 0499
www.rfs.nsw.gov.au



For any queries regarding this correspondence please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely



John Ball
Manager – Customer Service Centre Coffs Harbour

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

Appendix E – Map Sheets to be adopted

Refer to comments in **Part 4 - Mapping** relating to draft LEP maps regarding changes in how the statutory maps will be provided in the future.

At present the Map Cover Sheet is a part of the submission of the draft LEP for formal approval by the Minister for Planning or delegate. It will not be prepared until that stage.

The Map Cover Sheet will contain the final content of the Part B Changes to Map Sheets within **Appendix B**.

If required, the proposed map sheets to be adopted, as listed there, will be on the following pages.

Where in electronic form, it is possible these map sheets will be separate documents.