

Draft Outline of TRRA submission to PSC on the Draft Port Stephens Local Environmental Plan (LEP) 2012

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Note – submission deadline was extended to 5 pm Friday 14 December following complaints from TRRA and others

Introduction

TRRA welcomes the preparation of a new LEP largely following the standard template. The new LEP should significantly simplify and clarify the statutory planning framework for Port Stephens, giving both individual landowners and the community in general a better understanding of permitted land uses and related planning requirements. We also welcome assurances that the new LEP has not re-zoned any land on the basis of deliberately increasing development opportunities and that any such re-zonings need to be the subject of separate applications, and full consultation and assessment processes.

The new LEP should assist in meeting community expectations and in particular reducing the opportunity for abuse of zoning to develop land in quite unexpected and inappropriate ways. This has been a particular problem in the past (and present) in relation to land zoned Rural 1A where Council has repeatedly approved DAs (often against the advice of its professional planners) which are clearly incompatible with the rural character that is supposed to prevail in this zone.

Both zoning changes, and inappropriate approval of DAs, potentially deliver very significant ‘windfall’ financial gains to some property owners. Unfortunately, such approvals and spot re-zonings have led many owners of land zoned Rural to ‘expect’ to be allowed to develop their land to achieve similar windfall gains.

Once the new LEP is adopted and landowners have understood the new zoning and other controls, it is essential that Council is consistent in its application of the LEP to future DAs, to avoid a repetition of the past situation where some owners have benefitted disproportionately from ‘unfair’ and inconsistent decisions.

Uncertainty about other changes to the planning system.

The LEP and accompanying reports explain, and emphasise, Development Control Plans (DCPs) as the level at which certain issues/controls are more appropriately addressed than in the LEP. We also note that Council planning staff are now engaged in a comprehensive review of all DCPs applying in Port Stephens, and that a revised DCP, both with LGA wide controls and with controls for specific geographic areas, will go on public exhibition in 2013. However we are aware that the State government has proposed legislative amendments to limit the effect of DCPs. If these pass, Council may need to revisit the location of some controls, bring them forward and put them in the LEP instead, to achieve the desired effect for the community.

Similarly, changes are proposed to the suite of State Environmental Planning Policies (SEPPs), which apply over the top of the LEP. We understand that the PS LEP 2012 has been drafted to as far as possible reflect the current impact of SEPPs and other State level planning instruments, but again this relationship may need to be revisited if the SEPPs are changed before the LEP is finalised.

Relationship between LEP controls

The separation of LEP presentation into different map layers (zoning, height limits, lot size and heritage, flood prone, acid sulphate soils etc) appears to have some advantages but is a significant change. We understand that it will in future be necessary to look at all of the maps to understand what development is permitted – knowing only what a parcel of land is zoned as will no longer correlate to particular height limits or subdivision constraints. These are the three main controls that many people will be interested in when they ask the question ‘what can be built next door (or on a particular site of community interest)?’ Council will need to undertake significant education activities to explain the effect of the new approach.

Zoning and related controls

Rural zones

As we have already noted above, inconsistent development approvals , often contrary to professional planning advice, have unfortunately led many owners of land zoned Rural to ‘expect’ to be allowed to develop their land to achieve windfall financial gains. There is clearly considerable concern amongst such landowners that the new LEP will deny them these opportunities and effectively devalue their land.

In reality, most rural land would never have been able to gain approval for development, not because of the zoning, which has obvious loopholes such as poorly defined ‘tourist facilities’, but because of other controls, such as environmental constraints – including flood prone land, acid sulfate soils or threatened species habitat. The reclassification in the new LEP of some Rural 1A zoned land as ‘E2 - Environmental Conservation’ or ‘E3 – Environmental Management’ largely reflects the overlay of these other constraints, and should give everyone a much clearer and more accurate indication of permissible land uses in rural zones.

The minimum lot sizes of 40ha and 20ha in the new RU1 and RU2 zones respectively should help to avoid inappropriate development. We remain concerned about the range of exceptions that will still

apply – particularly Clauses 4.2A-C, and seek assurance that these will not allow for significant ‘out of character’ developments on rural land.

Residential zones

There appears to be significant extension of the areas in which multi-unit residential developments will be allowed, around commercial centres (notably at Nelson Bay and Shoal Bay), although in most cases maintenance of existing height limits – typically 8 or 9 metres – would constrain the type of development that could take place. We understand the rationale for allowing for higher density development close to commercial centres, but residents will need to be re-assured that height limits and design standards in DCPs will maintain reasonable amenity in these ‘urban fringe’ areas.

A significant change is that the height maps allow for 15 metres in the entire R3 area north of Shoal Bay Road (except for the Diggers club) – this will in effect allow for up to 5 storey units in areas currently limited to 3 storeys, and is contrary to community expectations. Issues include the impact of significantly greater height and bulk on local amenity, and also the potential visual impact of high buildings along Shoal Bay Road in terms of views from the Bay – the community generally supports keeping buildings below the tree canopy when viewed from the waterways. The reasons for the state government limitation on the then RSL sites (which have been incorporated in the height map) apply equally to the surrounding residential areas. It would be bizarre to allow 15 metre residential units adjacent to the club while still limiting the club to 9 metres. Either there is a convincing justification for lifting the height limits in this entire area, including the club site) or there remain good reasons for limiting heights in the entire area.

Commercial Zones

We understand that the LEP’s new zones and height limits DO NOT incorporate the changes adopted by Council as strategies or planning principles for centres such as Medowie, Anna Bay and Nelson Bay (and currently proposed for the Salamander Centre vacant land), except to the extent that these changes have already been given effect through spot re-zonings or chapters in the DCP.

In order to give effect, for instance, to the height variation policy in the 2012 Nelson Bay Strategy Council will need to *separately* resolve to incorporate this in the new LEP (and revised DCP). The height map as currently proposed would ‘lock in’ a 15 metre height limit throughout the commercial B3 zone, but would also override the decision made in 2012 to limit building heights in specific areas of the town centre and foreshore. TRRA believes that the hard fought compromise of the 2012 Nelson Bay strategy should as far as possible be reflected in the LEP.

TRRA believes that a height variation may be desirable for the Salamander Commercial Centre, to allow for the possibility of residential units over shops in any new or re-development. It is desirable to provide for this to avoid this commercial centres becoming sterile and ‘dead’ out of hours, and to encourage permanent apartment living close to facilities, for environmental sustainability reasons. The Salamander Centre does not have the landform/view constraints that the community has decided should limit heights in Nelson Bay and Shoal Bay. For this reason, the Salamander Centre B3 zone could have a greater height limit than the proposed 15 metres.

Environmental/Recreation Zones

The level of protection afforded to some key areas of bushland/open spaces on the Tomaree peninsula appears to have been increased (by rezoning to E2 or E3), and this is welcome. We are aware that many affected landowners are concerned about potential loss of use rights and value, but we are assured by planners that the re-zoning in most cases simply reflects other constraints which already apply, such as flood prone land, acid sulfate soils or ecological protection.

There are some further sites which we suggest should be zoned Environmental Protection – particularly at Soldiers Point - see Attachment 1, and some sites which have been zoned E3 should in our view receive the greater protection offered by E2 (e.g. Corlette Headland).

Heritage protection

The Heritage maps do not appear to include sites of Aboriginal Heritage significance – we understand that this is at the request of aboriginal communities, and respect their desire not to advertise the precise location of such sites. However, at the DA stage it would be unfair to have aboriginal heritage considerations taken into account that were not made clear at least to the applicant, ad potentially to other interested parties. We suggest that Council explains how these two important public interests will be reconciled.

Tourism

An obvious question is why Council has chosen not to use the standard template Tourist zone SP3, given the significance of tourism for the local economy, particularly in the Tomaree peninsula. We understand that it is considered unnecessary as all tourist developments could be accommodated in other zones, where appropriate.

Other

Flooding

We understand that the flood mapping reflects currently agreed constraints, including provision for expected sea level rise. There are a number of flood risk studies still under way however and the LEP may need to be modified in light of these, once they are completed. TRRA suggests that Council inform landowners likely to be affected by any future additional flood prone land constraints of this possibility as soon as practicable. This might avoid landowners in such areas reading the LEP as allowing land uses which are unlikely to be permitted in the longer term, potentially giving rise to claims against Council for loss of value in the event of later amendments.

Wetlands

TRRA welcomes the consolidation of existing wetland protection into a new clause 7.9 and associated map layers, providing greater clarity and certainty.

Caravan Parks and Manufactured Home Estates

Caravan Parks and Manufactured Home Estates meet an important demand in the community for affordable housing. However, development approvals have been given in the past to such developments in inappropriate locations, too far removed from public transport and other

community facilities, and sometimes on land zoned rural where the development is clearly not consistent with a predominantly rural character theoretically expected. We understand that Council's ability to control this type of development is hampered by the definitions which do not adequately distinguish between temporary holiday accommodation and permanently occupied mobile homes. Council has made a submission to the Department of Planning seeking more flexibility. TRRA supports Council in its attempts to improve its ability to control inappropriate mobile home developments.

Visual amenity along main access roads

The community has been very concerned about the way in which new developments adjacent to the main access roads on the Tomaree peninsula have not been required to maintain a natural vegetation buffer along the road. The result is ugly commercial or industrial developments intruding into the otherwise predominantly 'bush' environment which is one of the area's major assets. Examples include Taylors Beach and Nelson Bay Road at Anna Bay, where developers have been allowed to clear fell sites right up to the roadside, with at best a requirement for a narrow strip of new landscaping. TRRA urges Council to include in the LEP controls to ensure that major commercial or industrial developments adjacent to main access roads have to preserve a reasonable buffer of native vegetation, including mature trees.

Architectural roof features

A common complaint from the community is that height and design controls are frequently compromised by the erection of ugly structures such as lift towers and air conditioning units on rooftops. We note that Clause 5.6 of the LEP 2012 addresses the issue of architectural roof features but that this is primarily about allowing creative design of facades etc. While this is welcome, TRRA urges Council to include in the LEP appropriate controls over what can be placed on rooftops, in some cases over and above applicable height limits.