

8. Appendix 2– Planning Context

Mid North Coast Regional Strategy 2006

The Mid North Coast Regional Strategy is the pre-eminent planning document for the NSW Mid North Coast, representing an agreed NSW Government position on the future of the area. It reflects local Council settlement strategies and sets regional parameters for future strategic planning. In doing so, the Strategy complements and informs other relevant State planning instruments and applies for the period from 2006 to 2031, with a review scheduled for every five years.

The primary purpose of the Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years. The Strategy also incorporates the regional infrastructure requirements identified in the *State Infrastructure Strategy 2008-2009 to 2017-2018*. In this way, the Regional Strategy will inform the infrastructure investment priorities for the Mid North Coast, based on the broad planning framework identified in the Regional Strategy.

The Strategy applies to eight local government areas (LGA): Clarence Valley, Coffs Harbour, Bellingen, Nambucca, Kempsey, Port Macquarie-Hastings, Greater Taree and Great Lakes.

Under the strategy, Port Macquarie is nominated as a Major Regional Centre. Major Regional Centres are to accommodate the majority of regional population growth and employment opportunities and delivery of State and Regional services.

NSW Coastal Policy 1997

The *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* recognises that a wide range of government agencies and local councils are responsible for the coast of NSW. The aim of the Policy is to better coordinate the management of the NSW coast, and to protect and conserve the coast for future generations. It seeks to adopt the principles of ecologically sustainable development.

The NSW Coastal Policy contains a detailed range of objectives and strategic actions that give guidance to state government agencies and local councils in the planning for and management of the coastal zone.

The Policy has no impact on existing use rights of residential and other developments.

Coastal Design Guidelines for NSW 2003

The *Coastal Design Guidelines for NSW* provide best practice guidance for urban design in coastal areas. They are intended to be incorporated into a range of planning documents including Local Environmental Plans, Regional Environmental Plans, settlement strategies and masterplans. Until expressly incorporated as planning requirements into an environmental planning instrument, the guidelines are a policy document only, and as such not legally binding.

~~NSW Estuary Management Manual 1992~~

~~The NSW Estuary Management Program was introduced to help resolve conflicts surrounding estuary management, including through the provision of technical and financial assistance to local government. The latter will enable local government to prepare and implement sustainable estuary management plans.~~

~~The need for this has arisen due to the intense land use pressure on the majority of estuaries in NSW, resulting from about 80% of the NSW population living near an estuary. Most of the State's estuaries are also considered modified as a consequence of this pressure and there are conflicts within local communities over the use of this limited resource.~~

NSW Local Government Act 1993

The *Local Government Act* provides for local government, by providing the legal framework for the system of local government in NSW, including regulation of the relationships between the people and bodies comprising the NSW system of local government. It further seeks to encourage and assist the effective participation of local communities in the affairs of local government. It also requires councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities. Finally, the Act provides ~~Councils~~ councils with

- the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
- the responsibility for administering some regulatory systems under the Act, and
- a role in the management, improvement and development of the resources of their areas.

The *Local Government Act* (and associated Regulation) also outline requirements of the preparation of Plans of Management for community land.; However, Crown land is excluded from the definition of public land, unless it has been vested in a council. Therefore, Crown land under council care and control must be assessed and managed in accordance with the provisions of the *Crown Lands Act 1989*.

NSW Water Management Act 2000

The *Water Management Act* was developed to support a consistent water resource policy in Australia, as sought by the Council of Australian Governments. It provided for reform in water management to address wide-spread natural resource degradation caused by water use. Major elements of the reform process were

- Separation of water entitlements from land
- Planning processes for the delivery of environmental flows
- Managing access to consumptive water users, and
- Integration with natural resource and planning laws.

The objects of *Water Management Act* are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations. Under the Act, all water that flows into an identified water source is allocated to consumptive and non-consumptive uses through water-sharing plans. The Act also regulates management of water through water management plans. Apart from the management of water resources, the Act provides for a system of licences and approvals for water access, water use and water management works.

NSW Threatened Species Conservation Act 1995

The aim of the *Threatened Species Conservation Act* is to protect biological diversity and promote Ecologically Sustainable Development (ESD). It works in conjunction with other Acts such as the *National Parks and Wildlife Act 1974* and seeks to protect threatened species (or at least prevent native species from becoming extinct), populations and ecological communities directly or indirectly through the protection of their habitat. It further aims to manage the processes responsible for the species, population or ecological community becoming threatened and seeks their recovery in nature.

NSW Fisheries Management Act 1994

The objectives of the FM Act are to conserve, develop and share the fishery resources of NSW for the benefit of present and future generations, and in particular:

- to conserve fish stocks and protect key fish habitats, and
- to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
- to promote ecologically sustainable development, including the conservation of biological diversity, and, consistent with these objectives:
 - to promote viable commercial fishing and aquaculture industries,
 - to promote quality recreational fishing opportunities,
 - to appropriately share fisheries resources between the users of those resources, and
 - to provide social and economic benefits for the wider community of NSW.

To meet these objectives, Part 7 of the FM Act outlines legislative provisions to protect fish habitat, and Part 7A outlines threatened aquatic species legislation. The Part 7 provisions are commonly triggered by the “integrated development” process under the Environmental Planning and Assessment Act 1979 (EP&A Act). However, there are other activities that may not require development consent but may still require a permit from DPI Fisheries.

The Act applies to all fish and marine vegetation in NSW State waters.

~~The Fisheries Management Act constitutes an amendment to the Environmental Planning and Assessment Act 1997 and provides legislation in relation to the conservation of fish and marine vegetation. It operates in the same ways as the Threatened Species Conservation Act, but in relation to marine life and habitat. The Act applies to all waters in New South Wales and off the coast of New South Wales within the Australian Fishing Zone.~~

NSW Maritime Services Act 1935

The Maritime Services Act provided for the establishment of the “Maritime Services Board of New South Wales”, as well as amended a number of other Acts as required in connection with the establishment of the Board. The Board is responsible for the administration of a number of other acts including the Navigation Act 1901. The Board replaces the “Sydney Harbour Trust Commissioners”, exercising and discharging the powers, authorities, duties, functions and obligations previously carried out by the Commissioners, as well as additional other powers, authorities, duties and functions. The Act is subject to the Ports and Maritime Administration Act 1995. It is intended to be repealed on the commencement of Part 1 of Sch 2 to the *Marine Safety Act 1998* No

121.

NSW Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* regulates activities which potentially have a detrimental impact on the environment i.e. air, water and noise pollution and waste management. The objectives of the Act are as follows:

- a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,
- b) to provide increased opportunities for public involvement and participation in environment protection,
- c) to ensure that the community has access to relevant and meaningful information about pollution,

- d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
- e) to rationalise, simplify and strengthen the regulatory framework for environment protection,
- f) to improve the efficiency of administration of the environment protection legislation, and
- g) to assist in the achievement of the objectives of the Waste Avoidance and Resource Recovery Act 2001.

SEPP 1 Development Standards

~~The aim of this Policy is to introduce greater flexibility into Environmental Planning Instruments prepared under the *Environmental Planning and Assessment Act 1979*. This was to be achieved by removing some of the rigidity arising from strict adherence to development standards. That is, the Policy provides flexibility in the application of planning controls in circumstances where strict compliance with development standards would be unreasonable or unnecessary or tend to hinder the attainment of the objects of the *Environmental Planning and Assessment Act 1979* in respect of development effects on threatened species, populations or ecological communities, or their habitats. It does not apply where development standards are identified as “non-discretionary” by an Environmental Planning Instrument or relevant Regulations.~~

SEPP 14 Coastal Wetlands

The aim of this Policy is to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State.

Under the SEPP, coastal wetlands have been mapped in a number of local government areas (excluding Sydney and land reserved or dedicated under the *National Parks and Wildlife Act 1974*). The Policy covers some 1,300 wetlands across the State and development consent is required for activities including land clearing, land draining, land filling and the construction of levees.

SEPP 71 Coastal Protection

SEPP 71 Coastal Protection is the main law regulating coastal development in NSW. It came into force in 2002 and is legally enforceable.

The Policy aims to further the implementation of the *NSW Coastal Policy 1997*. It specifies additional matters that must be considered in the preparation of Local Environmental Plans, as well as in determining development applications. It also requires the preparation of masterplan for certain subdivisions in the sensitive coastal zone, and identifies the requirements for those masterplans. Finally, it specifies certain development applications in sensitive coastal locations that need to be referred to the Director-General for comment.

SEPP (Major Projects) 2005

This Policy is intended to identify the development to which the development approval process under Part 3A of the *Environmental Planning and Assessment Act 1979* applies. This includes certain types of development (Schedule 1), development on certain sites (Schedule 2), projects on state significant sites (Schedule 3) and critical infrastructure projects (Schedule 5).

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure by:

- a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services,
- b) providing greater flexibility in the location of infrastructure and service facilities,
- c) allowing for the efficient development, redevelopment or disposal of surplus government owned land,
- d) identifying the environmental assessment category into which different types of infrastructure and services development fall,
- e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and

- f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

Native Title

Native title issues are regulated by both the Commonwealth *Native Title Act 1993* and the NSW *Native Title Act 1994*.

Native title legislation recognises the right of Indigenous people to interests in their traditional lands. It was only introduced in Australia following the *Mabo v Queensland* case in the High Court in 1992. The High Court held that the rights of Aboriginal people and Torres Strait Islanders in respect of a particular piece of land are recognised by common law as native title. This is provided that Aboriginal people and Torres Strait Islanders can show that they are descended from the original inhabitants of the land in question and that they have maintained their traditional laws and customs. It is also contingent upon their title not having been extinguished by the grant of an inconsistent interest.

Following the adoption of the Commonwealth *Native Title Act* after the *Mabo* case, each state passed complementary legislation that validated past acts of the states that created interests in land. The NSW *Native Title Act 1994* adopts all other measures of Commonwealth legislation, while confirming and applying its precepts to relevant acts of the Crown in NSW. That is, the Act validates past acts, confirms that previous non-exclusive possession burdens native title to the extent of inconsistency between the different rights and interests.

Native Title legislation makes provision for Aboriginal and Torres Strait Islanders to lodge claims over Crown land. The legislation also sets out the requirements for the Crown and appointed Crown Reserve Trusts in dealing with Crown land in the future unless it can be clearly established that any native title rights and interests that may have existed have been extinguished.

Native title may have been extinguished over parts or the whole of Precinct A by the construction of authorised public works or by lawful use of the land that is wholly inconsistent with the continuation of native title rights and interests. It will be the responsibility of the reserve managers to ensure that, prior to any works being undertaken, the issue of native title is addressed.

Hastings Local Environmental Plan 2001

The Port Macquarie-Hastings Local Environment Plan 2011 (LEP) is the main planning instrument regulating the development and use of land in the Port Macquarie-Hastings LGA. The objectives are relevant to this PoM as follows:

- (a) to protect, conserve and sustainably manage the ecological biodiversity and natural environment of the Port Macquarie-Hastings area,
- (b) to facilitate a strong and diverse local economy within the Port Macquarie-Hastings area,
- (c) to manage and coordinate the orderly, equitable and economic use and development of land within the Port Macquarie-Hastings area,
- (d) to facilitate the provision and coordination of community services and facilities within the Port Macquarie-Hastings area,
- (e) to facilitate adaptive planning for natural hazards and risks, including flooding, erosion, inundation, land stability, bush fire risk and acid sulfate soils within the Port Macquarie-Hastings area,
- (f) to reinforce the role of the Port Macquarie-Hastings area's settlement hierarchy, centred on Port Macquarie and supported by its surrounding towns and villages,
- (g) to ensure the effective management of public assets within the Port Macquarie-Hastings area,
- (h) to provide a land use framework for development within the Port Macquarie-Hastings area that is safe, inclusive and equitable, and caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,
- (i) to ensure that development does not conflict with the hierarchy of business and retail centres in the Port Macquarie-Hastings area and the role of the Greater Port Macquarie Central Business District as the focal point for subregional functions and service delivery,
- (j) to identify and protect features of environmental, cultural or visual importance within the Port Macquarie-Hastings area

Subject to general and special provisions, development of land is controlled by zoning.

Within Precinct A, there are several zones as shown in Illustration 5.

- Zone R1 General Residential:

Land at Settlement Point, including Settlement Point Reserve.

- Zone SP3 Tourist:

Land around the Port Macquarie Marina.

- Zone B3 Commercial Core:

Land adjoining Crown land along the CBD foreshores, Plaza Car Park site and opposite the Marine in the Settlement City Precinct

- Zone R4 High Density Residential

Land adjoining the foreshore opposite Westport Park and the Town Beach area

- Zone RE1 Public Recreation:

Crown land between the Marina, and Flagstaff Point.

- Zone E2 Environmental Conservation:

Hastings Regional Crown Reserve Precinct A | Plan of Management

Land between Sails Resort and the canal entrance, in the vicinity of Settlement Point, Pelican Point and around Flagstaff Point

- Zone E! National Parks & Nature Reserves:

Land comprising the Woregore Nature

- Zone W1 Natural WaterwaysThe waterway comprising the Back Channel

- Zone W2 Recreational Waterways

The remainder of the Hastings River in the vicinity of the Crown Reserve

~~The *Hastings Local Environment Plan 2001* (LEP) is the main planning document regulating the development and use of land in the Port Macquarie-Hastings LGA. It has consolidated previous planning documents into a single LEP for the whole LGA. The following provides more detailed information on the zone objectives and permissible development and activities on land in Precinct A.~~

~~*Zone 2 (a1) Residential*~~

~~The 2 (a1) Residential zone applies to land at Settlement Point, including Settlement Point Reserve. The objectives of the zone are~~

~~g) To identify land suitable for residential purposes.~~

~~h) To ensure the provision of services and facilities associated with residential land uses or which are unlikely to affect residential amenity.~~

~~i) To ensure a variety of housing choice.~~

~~j) To enable appropriate development where allowed with consent.~~

~~The zone is heavily restricted in terms of the types of development that are permissible. Any development within the zone requires consent (the submission of a development application). Rezoning of Settlement Point Reserve to 6(a) would be appropriate to reflect its ownership by the Crown and primary function as open space.~~

~~*Zone 2 (t1) Residential Tourist*~~

~~The 2 (t1) Residential Tourist zone applies to land around the Port Macquarie Marina. The objectives of the zone are:~~

~~a) To ensure that permanent residential development does not sterilise identified tourism precincts.~~

~~b) To permit and encourage tourist and ancillary residential development and associated services and facilities where such services and facilities are an integral part~~

~~of the development and are of a scale appropriate to the needs generated by that development, or which are compatible with tourist and associated residential accommodation.~~

~~e) To enable appropriate development where allowed with consent.~~

~~Development in the zone is restricted in accordance with its objectives. Any development within the zone requires consent.~~

~~Zone 3(t) Tourist Business~~

~~This zone applies to land adjoining Crown land along the CBD foreshores. It also applies to the Plaza Car Park site. The objectives of the zone are:~~

- ~~a) To permit development appropriate to the status and function of the particular business centre.~~
- ~~b) To permit a range of tourist developments which take advantage of the tourism potential of the centre.~~
- ~~c) To enable appropriate development where allowed with consent.~~

~~Development in the zone is restricted in accordance with its objectives. Any development within the zone requires consent.~~

~~Zone 6(a) Open Space~~

~~This zone applies to land between the Quality Sails Resort and The Governor's Way, and to foreshore land between Westport Park and the Sundowner Caravan Park. The objectives of the zone are:~~

- ~~a) To identify areas which are capable of being used for public recreation.~~
- ~~b) To enable development of land within this zone for recreational and other purposes that do not adversely affect the recreational use of the land.~~
- ~~c) To enable appropriate development where allowed with consent.~~

~~The following development are permissible, with consent: advertisements, car parks, community facilities, recreation areas, recreation facilities, roads and utility installations.~~

~~Zone 7(a) Environment Protection – Wetlands~~

~~This zone applies to land on either side of the backchannel, including SEPP 14 wetlands and the islands in the Hastings River (Woregore Nature Reserve). The objectives of the zone are:~~

- ~~a) To identify and protect significant wetland areas from incompatible development which will have a significant impact on the wetland.~~

~~b) To enable appropriate development where allowed with consent.~~

~~Development for the purpose of advertisements, agriculture, aquaculture, home businesses, recreation areas, roads, single dwellings, and utility installations (other than radio or television transmission towers) is permitted with consent.~~

~~*Zone 7(f1) Environment Protection – Coastal*~~

~~This zone applies to land between the breakwall and Clarence, Stewart and William Streets, including all of the Sundowner caravan Park, Marine Park, Town Beach and Flagstaff Hill. The objectives of the zone are:~~

~~a) To identify and protect areas of particular scenic significance.~~

~~b) To enable appropriate development where allowed with consent. Development for the purpose of advertisements, agriculture, aquaculture, dual~~

~~occupancies (attached dwellings only), forestry, home businesses, recreation areas, roads, rural tourist facilities, single dwellings, and utility installations (other than radio or television transmission towers) is permitted with consent.~~