

Broken Hill 2014 Section 73 A amendment

Proposal Title : **Broken Hill 2014 Section 73 A amendment**

Proposal Summary : **To correct the purpose of the Zone SP1 Special Activities (Mining) to Zone SP1 Special Activities (Mining and Extractive Industry) at Holten Drive, Broken Hill. This correction would provide permissibility of extractive industry, which is the ongoing and intended use of the subject site.**

PP Number : **PP_2014_BROKE_001_00**

Dop File No : **14/07916**

Proposal Details

Date Planning
Proposal Received : **09-Jul-2014**

LGA covered : **Broken Hill**

Region : **Western**

RPA : **Broken Hill City Council**

State Electorate : **MURRAY DARLING**

Section of the Act : **73A - Minor Matter**

LEP Type : **73A**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **1 Holten Drive Broken Hill 2880**

DoP Planning Officer Contact Details

Contact Name : **Ryan Thomas**

Contact Number : **0268412196**

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RPA Contact Details

Contact Name : **Tracey Stephens**

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DoP Project Manager Contact Details

Contact Name : **Wayne Garnsey**

Contact Number : **0268412192**

Contact Email : **wayne.garnsey@planning.nsw.gov.au**

Land Release Data

Growth Centre :

Release Area Name :

Regional / Sub

Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment :

Have there been meetings or
communications with
registered lobbyists? : **No**

If Yes, comment : **No known meetings or communications**

Supporting notes

Internal Supporting
Notes :

The planning proposal seeks to correct an unintended exclusion of extractive industry from the permitted uses within Zone SP1 when translating the zoning to the Broken Hill LEP 2013.

The primary use of the subject land is for extractive industry, being a quarry and concrete batching. The quarry extracts and processes a range of crushed rock type for aggregates, road base products, rail ballast, concrete aggregate and landscape supplies.

The quarry business operator wants to lodge a Development Application to seek approval for the continued use as a quarry and for proposed increase in extraction of materials. However, due to an anomaly created when translating the zoning when making the Broken Hill LEP 2013, extractive industry is now prohibited at the site. The use of the site can continue through existing use rights, however does not provide enough flexibility for expansion.

The site was Zone 1(m) Mining in the former Broken Hill Local Environmental Plan 1996 and the zoning allowed for both mining and extractive industry.

Zone SP1 allows for environmental protection works, roads and the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose. Any other development is prohibited. In this case the definition is mining. However, the zone now prohibits extractive industry as the definition of mining does not extend to extractive industry as outlined in the below dictionary terms.

"mining" means mining carried out under the Mining Act 1992 or the recovery of minerals under the Offshore Minerals Act 1999, and includes:

- a) the construction, operation and decommissioning of associated works, and**
- b) the rehabilitation of land affected by mining.**

"extractive industry" means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

"extractive materials" means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the Mining Act 1992.

Therefore, as the purpose of the Zone SP1 does not explicitly allow extractive industry, the intended increase in extraction of materials is prohibited under the zoning and the existing use rights do not extend to the increase.

The amendment seeks to correct the unintended exclusion of extractive industry.

It is requested that Section 73A be considered to change the description of the SP1(Mining) Zone in Land Zoning Map - Sheet LZN-005A to also include extractive industry.

Under Section 73A, Expedited amendments of environmental planning instruments: "An amending environmental planning instrument may be made under this Part without compliance with the provisions of this Part relating to the conditions precedent to the making of the instrument if the instrument, if made, would amend or repeal a provision of a principal instrument in order to do any one or more of the following:

a) correct an obvious error in the principal instrument consisting of a misdescription... the insertion of obviously missing words...

b) address matters in the principal instrument that are of a ... transitional... or other minor nature."

It is assessed that the matter could fall under either subclause (a) or (b). Council had sought to transition its previous zoning at this site and therefore this could be considered as a misdescription or obviously missing words under 73A(1)(a) or transitional under 73A (1)(b). The matter is also considered as minor under 73(1)(b) as the previous zoning included extractive industry and the ongoing and proposed future use has been extractive industry.

It is assessed that this planning proposal should proceed as the matter is considered minor and allows a previously permissible use to continue. It also allows the opportunity for the land owners to apply to intensify the current use of the site through the development application process.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The amendment would correct a definition translation error that occurred when translating zoning that applies to an operating quarry site when making the Broken Hill LEP 2013.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The current zoning inadvertently omits the ongoing use of extractive industry. The amendment would extend the purpose of the Zone SP1 to include extractive industry to correct the translation error that occurred when making the Broken Hill LEP 2013.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

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Is the Director General's agreement required? **N/A**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **N/A**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Concept mapping is provided and is adequate for section 73A review purposes. The planning proposal will require an amendment to Map - Sheet LSZ_005.**

Council has provided mapping showing the proposed mapping changes for Lot Size Map - Sheet LSZ_005. Final mapping must comply with the technical guidelines prior to submission to Parliamentary Counsel.

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment : **An amendment under section 73A does not require exhibition.**

Additional Director General's requirements

Are there any additional Director General's requirements? **N/A**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Council has submitted all the required information to allow the Department to assess its proposal as an amendment under section 73A of the EP&A Act.**

Proposal Assessment

Principal LEP:

Due Date : **August 2013**

Comments in relation to Principal LEP :

Assessment Criteria

Need for planning proposal : **The Planning Proposal is required to amend the purpose of the zoning to reflect the previously permitted and ongoing use of extractive industry on the site.**

A section 73A amendment is a mechanism to correct the mapping issues.

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Consistency with strategic planning framework :

The proposal is consistent with the endorsed Broken Hill City Council Land Use Strategy dated September 2012.

The proposed amendment would allow the expansion of an ongoing and intended operating use at this site.

Environmental social economic impacts :

The site is currently operating and council does not intend to change the permitted use of this site and therefore the continuation of the ongoing use is considered to have positive economic impacts and not to have detrimental social impacts or expectations.

The proposed amendment would allow permissibility of extractive industry on the site and environmental social and economic impacts can be considered at the development application stage.

Assessment Process

Proposal type :

Minor

Community Consultation Period :

Nil

Timeframe to make LEP :

6 months

Delegation :

RPA

Public Authority Consultation - 56(2)(d) :

Is Public Hearing by the PAC required?

No

(2)(a) Should the matter proceed ?

Yes

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
s73a submission-09072014100319.pdf	Proposal Covering Letter	Yes
council resolution-09072014100354.pdf	Proposal	Yes
cover letter-09072014110712#2.pdf	Proposal Covering Letter	Yes
revised proposal.pdf	Proposal Covering Letter	Yes
revised map-10072014132723.pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

Additional Information : **The section s73A Amendment should proceed subject to the following conditions:**

- 1. This is a minor matter that can be dealt with under section 73A of the EP&A Act.**
- 2. No public or agency consultation is required under Section 56 (c), 56 (e) or 57 of the EP&A Act.**
- 3. The proposed change to LEP mapping is to comply with the Departments 'Standard Technical Requirements for LEP Maps' - prior to submission to Parliamentary Counsel.**
- 4. The timeframe for completing the LEP is to be 6 months from the week following the date of the Gateway determination.**

Supporting Reasons : **It is assessed that the matter can be approved to proceed through either subclause (a) or (b) of Section 73A(1) of the EP&A Act. Council had sought to transition its previous zoning at this site and therefore this could be considered as a misdescription or obviously missing words under 73A(1)(a) or transitional under 73A (1)(b). The matter is also considered as minor under 73(1)(b) as the previous zoning included extractive industry and the ongoing and proposed future use has been extractive industry.**

It is assessed that this planning proposal should proceed as the matter is considered minor and allows a previously permissible use to continue. It also allows the opportunity for the land owners to apply to intensify the current use of the site through the development application process.

Signature:



Printed Name:

RYAN THOMAS

Date:

16/7/14

Endorsed
Wyamsey 16/7/14
A/Team leader.