

Planning Services

Plan Finalisation Report

Local Government Area: Lake Macquarie

File Number: OBJ17/13028

1. NAME OF DRAFT LEP

Lake Macquarie Local Environmental Plan 2014 Amendment No.29 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land identified in three town centres across Lake Macquarie; Belmont, Toronto and Warners Bay as shown on the Location Map (Figure 1).

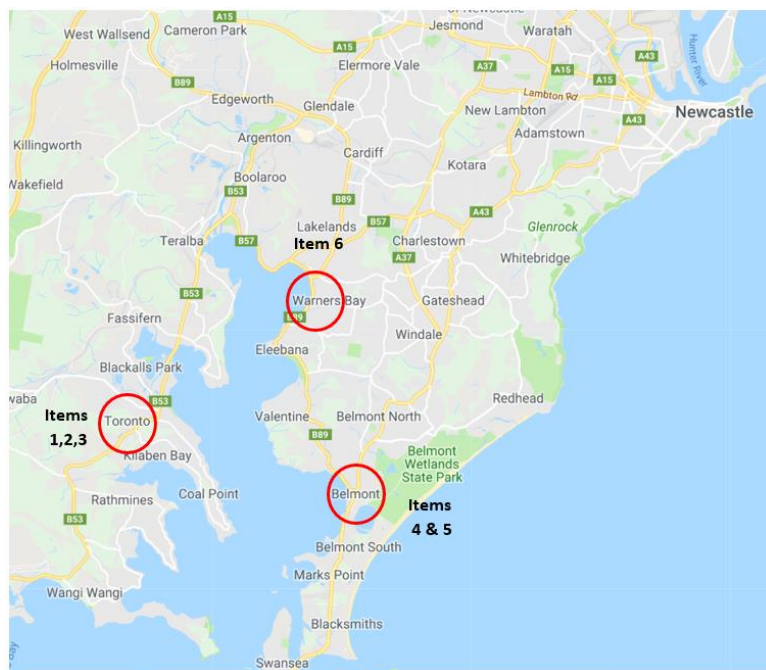


Figure 1: Location map (source: Nearmap).

Item number	Address
Item 1	94A & 100A The Boulevarde, Toronto
Item 2	209 and 211A Brighton Avenue: and Part of 201 and part of 205 Brighton Avenue, Toronto
Item 3	Part of 20 The Boulevarde, Toronto
Item 4	40, 42 & 56 Maude Street; and 2 Edgar Street, Belmont
Item 5	39 George Street, Belmont
Item 6	23A & 25 John Street, Warners Bay

Items 1 and 2: TORONTO TOWN CENTRE

- 94A & 100A The Boulevard, Toronto
- Part of 201, part of 205, 209 and 211A Brighton Avenue, Toronto

The sites are zoned B2 Local Centre and located within Toronto town centre core. They are adjacent to the rear boundary of properties facing onto the main street, The Boulevard. The sites were intended to establish a laneway which was abandoned by Council in 1989 because a private developer gained development consent for a supermarket, which included the construction of a retaining wall crossing the proposed laneway alignment.

Reclassification of the sites to Operational Land will allow consolidation with adjoining commercial lots to strengthen the town centre. Parts of Item 1 were referred to Executive Council to discharge interests on certain parcels (see Section 9 Assessment).



Figure 2: Toronto Items 1 & 2 sites and aerial photograph (source: Nearmap).

Item 3: TORONTO TOWN CENTRE

- Part of 20 The Boulevard, Toronto

The subject site is zoned B2 Local Centre and is located close to Lake Macquarie foreshore. It has frontage to the main street and is contained within the town centre core.

The site was transferred into Council's ownership in 1956. It originally provided a community hall/library before a new, purpose-built library was constructed on Pemell Street in 1989. It is currently used for a yoga studio, gym and commercial office space.

The existing building is over two lots, one of which was classified as Operational in 1993 when Council classified its land however the subject site fronting The Boulevard was not reclassified. Reclassification of the land to Operational will allow the site to be potentially sold or redeveloped.



Figure 3: Toronto Item 3 site and aerial photograph (source: Nearmap).

Items 4: BELMONT TOWN CENTRE

- 40, 42 & 56 Maude Street and 2 Edgar Street, Belmont

The sites are zoned B2 Local Centre and are located on the northern edge of the town centre. The street block acts as a transition from residential to a mix of support services for the town centre and adjoins Coles supermarket. A public carpark is near the Item 4 sites and Council's DCP Town Centre Area Plan for Belmont recommends a vehicle lane through the street block joining Henry Street to Herbert Street (see Figure 5).

Reclassification of the sites will allow land use flexibility so that the objectives of the DCP can be achieved and the street block can strengthen the role of Belmont town centre. The DCP proposes 2-3 storey buildings in accordance with the B2 Local Centre zone. Part of the Edgar Street properties are to remain undeveloped to allow for a deep soil zone either side of an existing stormwater channel (see Figure 5).



Figure 4: Belmont Item 4 sites and aerial photograph (source: Nearmap).

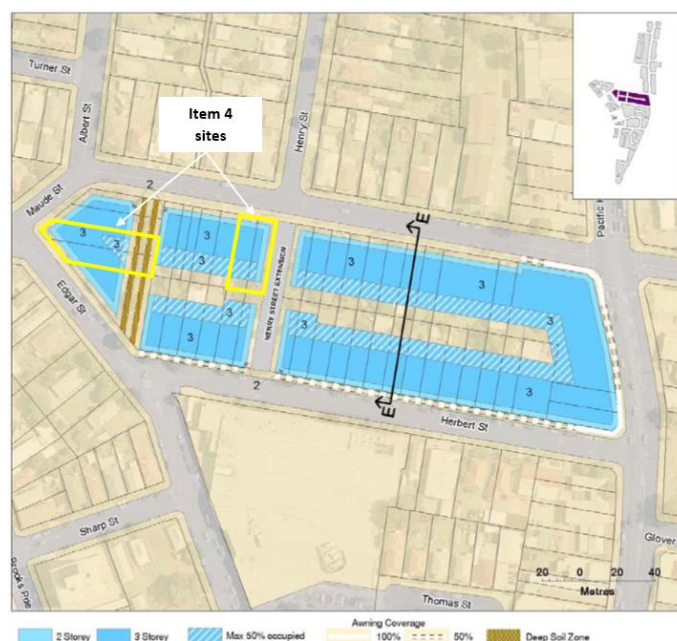


Figure 5: Block E Control Plan Part 10 Town Centre Area Plan - Belmont (source: LMCC DCP).

Items 5: BELMONT TOWN CENTRE

- 39 George Street, Belmont

The site is B4 Mixed Use Zone and is on the eastern side of the Pacific Highway and Belmont town centre. The street block consists of commercial buildings, some consisting of large footprints, which are accessed by an interior lane to a centre block car parking area.

Council purchased 39 George Street to redevelop the site in conjunction with its adjoining lands located at 35 and 37 George Street in accordance with its DCP.



Figure 6: Belmont Item 5 sites and aerial photograph (source: Nearmap).

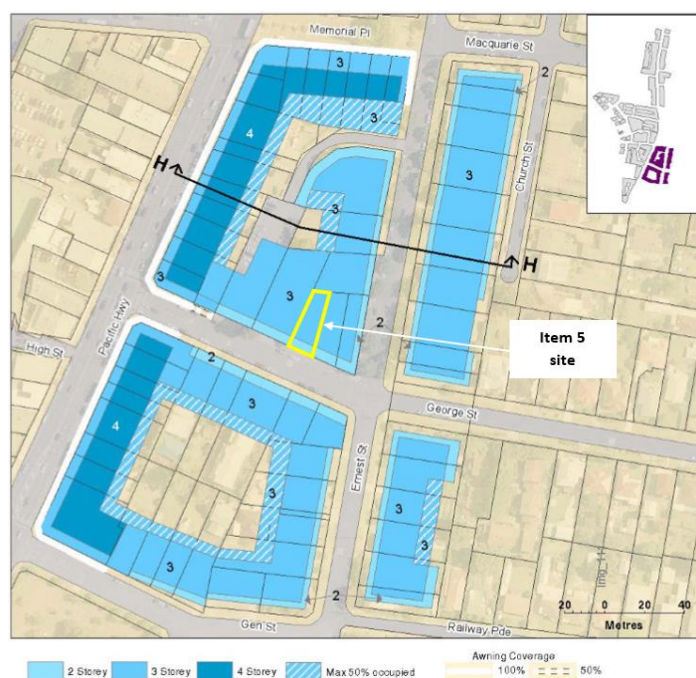


Figure 7: Block H Control Plan Part 10 Town Centre Area Plan - Belmont (source: LMCC DCP).

Items 6: WARNERS BAY TOWN CENTRE

- 23A & 25 John Street, Warners Bay

The sites are zoned B2 Local Centre and are located wholly within the town centre core of Warners Bay. The sites adjoin Warners Bay Post Office and provide access to the rear of commercial buildings on neighbouring King Street and internal footpaths for pedestrian circulation within the shopping centre. Council seeks to reuse the land to provide pedestrian amenity within the town centre and reconfigure the internal road system to provide more efficient vehicular circulation.



Figures 8: Warners Bay Item 6 sites and aerial photograph (source: Nearmap).



Figure 9: Town Centre Structure Plan – Part 10 Town Centre Area Plan – Warners Bay (source: LMCC DCP).

3. PURPOSE OF PLAN

The draft LEP seeks to reclassify specific sites from Community Land to Operational Land. There is no change proposed to the land use zones or associated development standards of the subject sites. The sites are Council-owned and the intended outcome of the Plan is to allow landuse flexibility of the sites, so the properties may contribute positively to the future town planning of the centres.

There will be no dwellings created as a result of the proposal however it is considered that future amalgamation of sites within the town centres will result in renewed economic activity and increased employment.

4. STATE ELECTORATE AND LOCAL MEMBER

The sites fall within the Lake Macquarie and Swansea State Electorates. Greg Piper MP is the State Member for Lake Macquarie and Yasmin Catley MP is the State Member for Swansea.

The sites fall within the Hunter and Shortland Federal Electorates. Joel Fitzgibbon MP is the Federal Member for Hunter and Pat Conroy MP is the Federal Member for Shortland.

To the regional planning team's knowledge, no MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 21 September 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions and was due for finalisation by 21 September 2018.

Council requested the draft Plan be made on 14 May 2018 and clarification was sought regarding the draft instrument on 22 June 2018. Clarification of property details was provided by Council on 2 July 2018.

Finalisation of the draft LEP was delayed due to time taken to attain the Governor's approval to remove restrictions on the land for Item 1 – 94A & 100A The Boulevard, Toronto (**Attachment Exco**).

The proposal was due for finalisation on 21 September 2018. This report recommends that a further extension of three (3) months be granted to enable the proposal to be completed before 21 December 2018.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council for 28 days from 11 November 2017 to 9 December 2017.

Three (3) submissions were received from community members. One submission was in favour of the proposal and the other two sought clarification about future land uses. Council has responded to the issues raised in the submissions as discussed below:

Submissions

Submission 1: (Item 1) – The Boulevard and Brighton Avenue Toronto

Agrees with the reclassification provided it results in commercial development and provides pedestrian access through the site and vehicular access to the existing commercial properties on The Boulevard.

Council was initially acquiring land to create a laneway at the rear of commercial properties in Toronto town centre. The proposed laneway was abandoned by Council in 1989 because a private developer gained development consent for a supermarket (ALDI), which included the construction of a retaining wall crossing the proposed laneway alignment.

The Department supports the reclassification because the land is no longer required for transport needs and can deliver an increase of usable commercial land in the town centre through consolidation with adjacent lots.

On-site car parking for future development applications within the street block is required by the Lake Macquarie Development Control Plan 2014. Adequate car parking exists in Council's multi-level car park and privately-owned car parks in the subject street block and adjoining street block.

Submission 2: (Item 4) – Maude Street and Edgar Street, Belmont

Seeks an explanation of how the land will be used and how this will affect adjacent residential properties.

Council indicated that this question relates to the future development of the land and not the reclassification process and this will be addressed at Development Application stage.

It is noted that Council's *Development Control Plan Part 10 – Town Centre Area Plan - Belmont* contains objectives and controls for this street block in Belmont town centre (see Figure 5). Council has already purchased and continues to approach the remaining land owners in street Block E to facilitate better vehicle circulation and deep soil zones for planting and car parking.

Submission 3: (Item 6) – John Street, Warners Bay

Australia Post, as the adjoining land owner, is concerned that vehicle access to its site will be affected by the future use of the Item 6 properties (Ref. 23A John Street – Lot 1 DP 719621) - see Figures 8 & 9.

Council indicated that this issue relates to the future development of the land and not the reclassification process and this will be addressed at Development Application stage.

Australia Post currently gains access to its car park across 23A John Street which is existing Community land. Reclassifying the land to Operational will not prevent the use of the land for vehicular movement however, it is noted that Council's *Development Control Plan Part 10 – Town Centre Area Plan – Warners Bay* seeks to establish a 'high amenity plaza or Market Square on the southern end John Street car park' – (see Figure 9 – identified Pedestrian Place). The DCP seeks to adapt 23A John Street to form part of the proposed 'Market Square' and will improve pedestrian access to the Post Office.

Council's proposal to re-distribute car parking to other sites on the edge of the town centre will benefit the overall amenity of the town centre for users and business owners. The DCP indicates that vehicular access to the Post Office car park will be maintained via Postmans Lane which is at grade level to the Australia Post carpark.

Public Hearing

A public hearing was held after the exhibition period on 7 February 2018 in accordance with section 29 of the *Local Government Act 1993*. One member of the public attended, whom supported the proposal and urged that development of Item 4 sites Belmont be expedited to alleviate their unsightly condition.

The public hearing report concludes that Council provided an appropriate opportunity for the community to provide input in relation to the proposed reclassification matters.

7. ADVICE FROM PUBLIC AUTHORITIES

Council consulted with the Subsidence Advisory NSW (SA NSW) in accordance with the Gateway determination. The Awabakal Local Aboriginal Land Council were also consulted as part of Council's processes. No responses were received.

As future development applications for construction or subdivision will need to be referred to SA NSW, there is no need for further advice from this agency before making the LEP.

There are no outstanding objections from any public agencies.

8. POST-EXHIBITION CHANGES

There are no amendments made to the planning proposal following public exhibition.

A new Parliamentary Counsel Opinion was requested on 8 October 2017 as the original Opinion was more than 3 months old. A fresh Opinion was issued on 11 October 2018 and no changes were made to the instrument.

9. ASSESSMENT

The Department supports the finalisation of Lake Macquarie LEP 2014 Amendment 29 as reclassification of the sites to Operational land will provide Council with better flexibility to manage its assets. The reclassification will also strengthen the town centres through a combination of re-use of buildings for commercial purposes, re-developed of land for commercial purposes, and improved traffic management including; car parking, vehicle circulation, footpaths.

There are no changes proposed to the land use zones or associated development standards of the subject sites. Any future development will need to be consistent with the existing zone objectives.

Practice Note PN 16-001 - Classification and reclassification of public land through a local environmental plan.

Pertinent to the planning proposal, the following matters are required to be addressed in a reclassification;

- The strategic and site-specific merits of the reclassification and supporting evidence;
- Whether the planning proposal is the result of a strategic study or report; and
- Current or proposed lease or agreements applying to the land, together with their duration, terms and controls

The strategic and site-specific merits of the proposed reclassifications are based on the objectives of Council's DCPs. The DCPs have been exhibited and adopted by Council so there is a vision for these town centres on the public record.

Issues raised during exhibition in relation to Australia Post's continued vehicular access to its property in Warners Bay are adequately addressed in the planning proposal and this report (see above Section 6 Public Exhibition).

Discharging interests on land – Governor’s approval: Item 1 – 94A & 100A The Boulevarde, Toronto

The Governor’s approval was required to remove restrictions on the title of community land at 94A and 100A The Boulevarde, Toronto. The draft LEP was considered by the Governor and Executive Council on 21 November 2018 who granted approval under section 30(2) of the *Local Government Act 1993* to reclassify community land as operational and extinguish the interests over the subject lands (**Attachment Exco**).

Section 9.1 Directions

Direction 4.2 Mine Subsidence and Unstable Land – all lands except for Item 4 are within a Mine Subsidence District. SA NSW were consulted and raised no objection. The planning proposal is consistent with this Direction.

Direction 6.2 Reserving Land for Public Purposes – the inconsistency to the reduce land for public purposes was agreed to at the Gateway determination. No further approval is required in relation to this Direction.

State environmental planning policies

The draft LEP is consistent with relevant SEPPs. The SEPPs will continue to apply to any future development of the subject sites.

State, regional and district plans

Greater Newcastle Metropolitan Plan 2036 (GNMP)

Item 6 Warners Bay is consistent with *Strategy 8* as it will allow flexibility to contribute to public domain improvements.

Strategy 8 seeks to address changing retail consumer demand and notes that Warners Bay Esplanade demonstrates the value in enabling mixed use pedestrian retail centres. Ongoing public domain improvement and main street master plans will support improvements to smaller centres.

The remainder of the items are not inconsistent with the outcomes and actions of the GNMP. Many are not directly relevant as the prime objective of the planning proposal is to improve land use flexibility by reclassifying the subject sites.

10. MAPPING

There are no maps associated with this planning proposal as there are no changes to zones or planning controls.

Practice Note PN 16-001 requires that a Land Reclassification (part lots) Map be prepared if land to be reclassified does not apply to the whole lot. None of the parcels are required to be mapped on the Land Reclassification (Part Lots) map as there are no part lots.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**). Council confirmed on 11 July 2018 that it was happy with the draft and that the plan should be made (**Attachment E**).

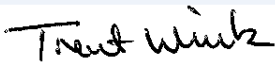
12. PARLIAMENTARY COUNSEL OPINION

On 11 October 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

That the Director Regions, Hunter as delegate of the Minister:

1. **agree** under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (the Act), to alter the Gateway determination for planning proposal PP_2017_LAKEM_006_00 as set out in the **Alteration of Gateway determination (Attachment C)** which involves the extension of the timeframe to complete the proposal by deleting condition 4. and replacing it with a new condition as shown under;
4. The timeframe to complete the LEP is to be 21 December 2018;
2. **agree** under schedule 1, clause 4 of the Act that no additional community consultation is required;
3. **note** the planning proposal (**Attachment A**), and the Gateway determination (**Attachment B**);
4. **note** the Governor's approval under section 30(2) of the *Local Government Act 1993* to reclassify community land as operational (**Attachment Exco**);
5. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this final Opinion (**Attachment PC**);
6. **make** the draft LEP under section 3.36(2)(a) of *Environmental Planning and Assessment Act 1979* (the Act), by signing the instrument (**Attachment LEP**); and
7. **sign** the letter to Lake Macquarie City Council (**Attachment Council**) advising of this decision.



11/12/2018

Trent Wink
Acting Team Leader, Hunter



11/12/2018
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Planning Services

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Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Alteration of Gateway determination
D	Consultation with Council
E	Council's acceptance of draft LEP
Exco	Governor's approval
PC	Parliamentary Counsel's Opinion
LEP	Draft LEP
Council	Letter to Council advising of the decision