

Planning Proposal

LAKE MACQUARIE CITY COUNCIL

**Draft Amendment No. 56 to the
Lake Macquarie Local Environmental Plan 2004**

Subject lands:

Lot 53 DP 1128122 (11 John Street, Warners Bay)

Lots A and B DP 162087 (13 John Street, Warners Bay)

Lot 10 DP 1128914 (21 John Street, Warners Bay)

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Part 1- Objective of the Planning Proposal

The Planning Proposal seeks to amend Schedule 3 of the Lake Macquarie Local Environmental Plan 2004 by reclassifying four parcels of Community land at Warners Bay in the Council's area, to Operational land. The proposed Operational status of the lands will enable Council to sell and/or develop the lands to strengthen the Warners Bay town centre through redevelopment.

Part 2- Explanation of Provisions

The proposal will amend Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) by reclassifying the following parcels of community land to operational land:

Amendment Applies To	Explanation of Provision
Schedule 3 – Reclassification of Community Land to Operational Land	Minor amendments are proposed to the Schedule as follows: • lot 53 DP 1128122 (11 John Street, Warners Bay) • lot A DP 162087 (Part 13 John Street, Warners Bay), • lot B DP 162087 (Part 13 John Street, Warners Bay), and • lot 10 DP 1128914 (21 John Street, Warners Bay).

Part 3 – Justification for the Provisions

The lands the subject of this proposal were acquired by Council during the 1970's for car parking purposes and are subject to an implied trust for that purpose. The lands were not be advertised as Operational Land with the enactment of the Local Government Act 1993 due to the implied trust.

The lands are situate in the commercial centre of Warners Bay and were identified in the Warners Bay Town Centre Area Plan adopted 23 November 2009 as having future development potential due to their close proximity and accessibility to the commercial strip and foreshore reserve.

The lands are zoned 3(1) Urban Centre under the provisions of the Lake Macquarie Local Environmental Plan 2004. The objectives of the zone are to provide centrally located land that generates viable employment and economic activity through commercial and retail activities, centrally located residential accommodation and vibrant social, cultural and community activity.

The Area Plan, consistent with the aims of the urban centre zone, aims to encourage urban centre development, particularly development that will enhance the residential density and liveability of the centre through the introduction of mixed use developments.

In order that future development options for the lands can properly be considered it is Council's preference to reclassify the lands to Operational Land so that future disposal or development can proceed as and when appropriate.

There will be no change in use of the lands until such time as an end use is known and any relevant development application determined. For this reason it is considered most appropriate that a traffic study be undertaken, and alternate public car parking measures be implemented, as part of the development assessment process for any proposed future development.

Two alternative Council owned sites within the town centre have been identified in the Lake Macquarie Contribution Plan No. 4 as proposed future public parking and a map indicating the alternate locations within the commercial precinct is attached as Diagram 2.

Section A - Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

No studies have been undertaken into the proposed reclassification of the subject lands. A traffic study will be obtained and considered as part of the development application assessment process, in the event the end use of the lands result in a change in use.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The lands were acquired by Council for car parking purposes and are subject to an implied trust. Reclassification by way of an LEP amendment under the Environmental Planning and Assessment Act 1979 is therefore necessary to facilitate sale or development of the lands consistent with the Area Plan. Reclassifying the lands in anticipation of establishing an appropriate end use will facilitate the proper consideration of possible future development opportunities.

3. Is there a net community benefit?

The land is constructed as and used for on-grade car parking, servicing the commercial precinct of Warners Bay. The best possible future use of the site is currently being investigated consistent with Area Plan and LEP provisions. It is considered that any worthwhile redevelopment of the lands should generate employment and stimulate economic activity, provide residential accommodation and enhance the vitality of the commercial precinct and to that end, a possible mixed use development, consistent with aims of the zone will be considered.

There will be no immediate, if any, change in the use of the lands.

In the event the proposed end use of the lands results in the displacement of public car parking, a traffic study will be commissioned and alternate public car parking measures implemented as part of the development assessment process.

Section B – Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including exhibited draft strategies)?

The planning proposal is consistent with the strategies outlined below:

Infrastructure Provision

All infrastructure is currently available to the lands. Any future development of the site however would necessitate a revision of the current level of services provided in accordance with Council's Development Control Plan No. 1, and

consultation will be required with service authorities to ensure that adequate services can be provided to support any proposed redevelopment.

Access

It is not proposed to make any change to the existing provision of access until such time as any possible future use has been investigated and a development application lodged. The provision of access to the site will be reviewed as part of the development assessment process.

Housing Diversity

The subject planning proposal does not generate any additional need for housing, but may in itself provide additional housing.

Employment Lands

It is anticipated that the proposal will increase the existing level of subregional employment related land that is currently available in the area, consistent with the strategic directions contained within Lifestyle 2020.

Avoidance of Risk

The proposal will not increase the likelihood of risk occurring in the subject area.

Natural Resources

The subject proposal will not increase the utilisation of natural resources and no changes will occur to the existing status quo.

Environmental Protection

The subject lands are currently tar sealed and used for on grade car parking. No biodiversity exists on the subject site.

Quality and Equity in Services

Any future development of the site will enhance the provision of services in the locality.

5. Is the planning proposal consistent with the local council's Community Strategic plan, or other local strategic plan?

Council's Lifestyle 2020 Strategy provides the long term direction for the overall development of the City and is a tool for managing private and public development in Lake Macquarie. The proposal is consistent with the strategic directions contained within Lifestyle 2020 and aims to achieve sustainability, equity, efficiency and liveability by enabling better utilisation of the lands. The lands were identified in the Warners Bay Town Centre Area Plan adopted 23 November 2009 as having future development potential.

The proposal is also consistent with the objectives of the Lake Macquarie City Council Local Environmental Plan 2004 by generating viable employment and economic activity, as well as a safe urban centre with vibrant social, cultural and community activity.

6. Is the planning proposal consistent with applicable state environmental planning policies (SEPPs)?

The Planning Proposal is consistent with State Environmental Planning Policies (Table 1).

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with Section 117 Ministerial Directions (Table 2).

Section C – Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The lands are far sealed and provide on grade car parking. No flora or fauna exists on the lands.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No.

10. How has the planning proposal adequately addressed any social and economic effects?

The proposal will have a positive social and economic benefit on the local and surrounding communities. The intention of the future development of the land is to generate viable employment and economic activity through commercial and retail activities whilst also providing a safe and vibrant urban centre which includes residential accommodation.

11. If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished.

The proposed reclassification does not involve the extinguishment of any interest in any parcel of land.

Section D – State and Commonwealth Interests

12. Is there adequate public infrastructure for the planning proposal?

The land is in an existing developed area with adequate services already provided. However the provision of infrastructure will be considered as part of the development assessment process for any future redevelopment of the lands, and consultation will occur with relevant Government agencies and service authorities to ensure the adequate provision of infrastructure required to support any future proposed use.

13. Details of the community consultation that is to be undertaken on the planning proposal.

The planning proposal will be exhibited in accordance with the NSW Department of Planning's LEP Practice Note PN09-003 Classification and reclassification of public land through a local environmental plan and a guide to preparing local environmental plans (July 2009). The public exhibition period will be for a minimum of 28 days.

After the public exhibition period has closed, Council will hold a public hearing for the reclassification of Community land to Operational land pursuant to the provisions of the Local Government Act 1993.

14. The concurrence of the landowner, where the land is not owned by the relevant planning authority.

Lake Macquarie City Council is the owner of the subject parcels of land.

Table 1 – State Environmental Planning Policies

An assessment has been undertaken to determine the level of consistency the proposal has with relevant State Environmental Planning Policies (SEPPs). The assessment is provided below.

SEPPs	Relevance	Implications
SEPP 33 – Hazardous and Offensive Development	The SEPP aims to ensure that a consent authority is adequately informed and has sufficient information to effectively assess an application for development, and to minimise adverse impacts associated with the development.	The SEPP will need to be considered upon submission of a application for development. Further investigations will be necessary to support development of the site in this regard, however these are not considered necessary for the Planning Proposal to proceed.
SEPP 44 – Koala Habitat Protection	The SEPP aims to provide proper conservation and management of Koala habitat by requiring the identification, conservation, and management of actual and potential Koala habitat.	The land has been constructed and used for on-grade car parking for many years. The land does not contain actual or potential Koala habitat.
SEPP 55 – Remediation of Land	The SEPP requires the subject land to be suitable for its intended use in terms of the level of contamination, or where the land is unsuitable due to the level of contamination, remediation measures are required to ensure that the subject land is suitable for its intended use.	The land is not known to contain contaminants. Further investigations in this regard will be necessary to support any future development of the site, however these are not considered necessary for the Planning Proposal to proceed. Where contaminants are identified, remediation will be required in accordance with State Government guidelines and regulations prior to development occurring.
SEPP 64 – Advertising and Signage	The SEPP aims to ensure that signage and advertising, particularly in road corridors, in appropriate to the location and setting of a proposed development.	The SEPP will need to be considered in the design and assessment of any subsequent application for development of the subject land.
SEPP (Infrastructure) 2007	The SEPP aims to provide a consistent planning regime for the delivery of infrastructure. It also	Development resulting from the proposal is not likely to require implementation of

SEPPs	Relevance	Implications
	provides provision for consultation and assessment.	the provisions of the SEPP.
SEPP (Mining, Petroleum Production and Extractive industries) 2007	The SEPP aims to manage the development of land for mining, petroleum, and extractive development in a manner that provides social and economic welfare of the State, and provides controls to promote ecologically sustainable development.	The subject land is within a Mine Subsidence District, and the Mine Subsidence Board will be consulted in this regard.

Table 2 - Section 117 Ministerial Directions Checklist

The following assessment of the proposal against relevant Ministerial Directions has been undertaken:

Ministerial Direction	Relevance	Implications
1.2 – Rural Zones	Aims to protect agriculturally productive land by preventing a draft LEP from rezoning land from rural to an urban land use, or intensifying the permissible density of rural land; unless it is consistent with a Department of Planning regional strategy or justified with concurrence from the Director-General	The proposal does not affect land currently zoned for rural purposes.
2.1 – Environmental Protection Zones	Aims to protect and conserve environmentally sensitive land by requiring appropriate provisions in a draft LEP and no reduction in environmental protection standards.	The proposal does not affect land currently zoned for conservation purposes.
2.2 – Coastal Protection	Requires a draft LEP to include provisions that are consistent with State Government coastal policy documents.	The draft LEP does not propose to rezone any sites within the coastal zone to facilitate residential development.
2.3 – Heritage Conservation	Aims to conserve items of environmental heritage by requiring a draft LEP to include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	The lands do not contain any items of heritage significance.
2.4 – Recreation Vehicle Areas	Aims to protect sensitive land or land with significant conservation values from adverse impacts of recreation vehicles by prohibiting a draft LEP from enabling of a recreation vehicle area in environmentally sensitive locations, and requiring certain matters to be considered in other locations.	The proposal does not include a recreation vehicle area.
3.1 – Residential Zones	Requires a draft LEP to include provisions that facilitate housing choice, efficient use of infrastructure, and reduce land consumption	The draft LEP does not propose to rezone any land to a residential zone.

Ministerial Direction	Relevance	Implications
	on the urban fringe.	
3.2 – Caravan Parks and Manufactured Home Estates	Requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	The draft LEP will not affect provisions relating to Caravan Parks or Manufactured Home Estates.
3.3 – Home Occupations	Requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	The draft LEP will not affect provisions relating to Home Occupations, and will retain the provisions of the principal LEP in this regard.
4.1 – Acid Sulfate Soils	Applies to land that has been identified as having a probability of containing acid sulfate soils, and requires that a draft amendment be consistent with the Acid Sulfate Soil component of the model Local Environmental Plan (ASS model LEP), or be supported by an environmental study.	Lake Macquarie LEP 2004 is consistent with the ASS model LEP. The draft LEP does not propose to alter any of these provisions.
4.2 – Mine Subsidence and Unstable Land	Aims to ensure development is appropriate for the potential level of subsidence. The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	It is intended that the Mine Subsidence Board will be consulted following the Gateway determination.
4.3 – Flood Prone Land	Applies where the draft LEP will effect provisions to flood prone land.	Land will only be released for development purposes where it is above the 100 year ARI flood level.
4.4 – Planning for Bushfire Protection	Aims to reduce risk to life and property from bushfire. Requires an LEP to have regard for <i>Planning for Bushfire Protection</i> , amongst other matters. Applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	The lands are not identified as being bush fire prone. The NSW Rural Fire Service will be consulted following the Gateway Determination.

Ministerial Direction	Relevance	Implications
5.1 – Implementation of Regional Strategies	Aims to give legal effect to regional strategies, by requiring draft LEPs to be consistent with relevant strategies. The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	The proposal is not of a scale to be specifically identified in the Lower Hunter Regional Strategy..
6.1 – Approval and Referral Requirements	Prevents a draft LEP from requiring concurrence from, or referral to, the Minister or a public authority unless approval is obtained from the Minister and public authority concerned. Also restricts the ability of a Council to identify development as designated development without the Director General's agreement.	The draft amendment will be consistent with this requirement.
6.2 – Reserving Land for Public Purposes	Aims to facilitate the reservation of land for public purposes, and to facilitate the removal of such reservations where the land is no longer required for acquisition. A Council must seek the Minister's or public authority's agreement to create, alter or reduce existing zonings or reservations in an LEP. A Council can also be requested to rezone or remove a reservation by the above.	The proposal will not have implications for public land reservations.
6.3 – Site Specific Provisions	Aims to reduce restrictive site specific planning controls where a draft LEP amends another environmental planning instrument in order to allow a particular development proposal to proceed. Draft LEPs are encouraged to use existing zones rather than have site specific exceptions.	The proposal is consistent with this direction.