

Planning Services

Plan Finalisation Report

Local Government Area: MidCoast

File Number: 17/13947

1. NAME OF DRAFT LEP

Great Lakes Local Environmental Plan 2014 Amendment No.17 (draft LEP).

2. SITE DESCRIPTION

The Planning Proposal applies to land in the Hawks Nest village centre (refer *Figure 1*).



Figure 1 – ‘Area A’ and ‘Area B’ identified in the Planning Proposal

‘Area A’ is land generally bounded by Tuloa Avenue and Yamba and Booner Streets and includes the following:

- Lots A and B, DP 380119
- Part of Lot 1, DP 798549
- Part of Lot 70, DP 1125455
- Lots 66-69, 78 and 80-90, DP 16379

‘Area B’ is land generally bounded by Beach Road and Booner, Margaret and Mirreen Streets and includes the following:

- Lot 2, DP 1036383
- Lot 1, DP 834977

- Lots 2, 4, 17, 18, 23–25, 27, 39, 41 and 48–50, DP 18915
- Lots 423 and 424, DP 519122
- Lot 1, DP 1045581
- SP 34479, SP 38529, SP 22389, SP 67542, SP 48858, SP 46669, SP 42243, SP 72893, SP 38151, SP 65045, SP 82361, SP 21057, SP 55988, SP 58396, SP 54635, SP 77721, SP 19308, SP 78343, SP 39728, SP 18307, SP37600 and SP51840.

3. PURPOSE OF PLAN

The draft LEP seeks to:

Area A		Area B
<ul style="list-style-type: none"> • rezone Area A from B1 Neighbourhood Centre zone to mix of R3 Medium Density Residential zone and E2 Environmental Conservation zone; 		<ul style="list-style-type: none"> • rezone Area B from R3 Medium Density Residential zone to B4 Mixed Use zone; • reduce the minimum lot size from 1000sqm to 450sqm.
Area A R3 Medium Density Residential zone	<ul style="list-style-type: none"> • create a maximum floor space ratio of 1:1; • increase the minimum lot size from 700sqm to 1000sqm. 	
Area A E2 Environmental Conservation zone	<ul style="list-style-type: none"> • reduce the maximum building height from 12m to 8.5m; • create a maximum floor space ratio of 0.4:1; • increase the minimum lot size from 700sqm to 40ha. 	

The draft LEP also seeks to:

- Omit 'Great Lakes' from clause 1.2(1) and insert instead 'that part of the Mid-Coast local government area to which this Plan applies (in this Plan referred to as Great Lakes)';
- Enable multi-dwelling housing in Area B by inserting a new clause 8 into Schedule 1 Additional permitted uses.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Port Stephens Electorate. Kate Washington MP is the State Member for Port Stephens.

Meryl Swanson MP is the Federal Member for Paterson.

To the Department's knowledge, neither 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.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 4 January 2016 (**Attachment C**) determined that the Proposal should proceed subject to conditions. The Gateway determination was altered on 26 February 2017 to extend the time to complete the Proposal.

The Gateway determination was altered on 26 February 2017 (**Attachment D**) to extend the time for completion.

The Proposal is due for finalisation on 11 October 2017.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 17 March 2016 to 22 April 2016.

During the exhibition period, a total of eight submissions were received from land holders and members of the public. Council also held a Community Workshop during the exhibition period. The purpose of the workshop was to provide information to the community regarding the Planning Proposal and to gain further feedback on the proposal. A total of 27 people attended the workshop.

Generally, submissions related to the following matters:

- requests to amend the zoning boundary lines and calls for specific land use on individual sites;
- a request for a review of the proposed E2 Environmental Conservation zone;
- concerns about maintaining the amenity of Hawks Nest and the desire to revitalise the existing village centre;
- ideas about how to improve the amenity of Hawks Nest and activate public places;
- concern that the proposed B4 Mixed Use zone in Area B would compete with the shops in the existing Hawks Nest business area;
- that the height limit and floor space ratio in Area B should be increased to allow additional land uses;
- concerns over possible land use conflict in Area B; and
- the need for Aboriginal cultural heritage assessment.

Council addressed the issues raised in submissions in the following ways, by:

- making minor amendments to the proposed zoning boundaries in Area A (particularly the E2 zone);
- reviewing the decision to zone 24 Yamba Street part E2 Environmental Conservation zone. Based on extensive assessment of the site, Council decided to rezone the property to wholly R3 Medium Density Residential;

- undertaking additional field surveys to ensure the areas of the proposed E2 Environmental Conservation zone most accurately reflected existing koala movement corridors in Area A;
- using the findings of the *Hawks Nest 3A Business Zone Review and Strategy (2004)* to support Council's position that the Proposal will consolidate Hawks Nest and that any net loss in business in the village centre (Area A) will be offset by other business opportunities provided by the proposed B4 Mixed Use zone (Area B).
- acknowledging the importance of a Place Making Strategy for Hawks Nest;
- retaining appropriate maximum building heights for those areas identified in the Proposal; and
- including the outcomes of the Aboriginal Heritage Information Management System (AHIMS) search within the Planning Proposal document.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the Office of Environment and Heritage (OEH) and NSW Rural Fire Service in accordance with the Gateway determination. Consultation with OEH resulted in delay to the planning process and necessitated the need for the Gateway extension.

OEH provided feedback on koala habitat and Aboriginal Cultural Heritage. OEH indicated its satisfaction with the level of the studies used to determine the extent of the E2 Environmental Conservation zone but requested Council continue investigation of the koala population in the vicinity. Further consultation was required with Karuah Local Aboriginal Land Council for Council to fulfil its due diligence requirements. This was carried out to the satisfaction of OEH.

Council has consulted these authorities and resolved any issues to the satisfaction of all parties. Neither agency objects to the Proposal.

Council also consulted the Department of Industry – Lands regarding the identified Crown Land proposed to be included as part of the Proposal. It was considered that the inclusion of the Crown Land was outside the scope of the Planning Proposal, however it may be included in a future Planning Proposal.

8. POST EXHIBITION CHANGES

The following amendments were made to the Planning Proposal after public exhibition:

- minor changes to the zone boundaries in Area A (refer *Figures 2 and 3*);
- inclusion of the discussion that was had with OEH and Local Aboriginal Land Councils regarding Aboriginal cultural heritage and the results of this consultation; and
- the removal of the proposed E2 Environmental Conservation zone from 24 Yamba Street and the decision to rezone the site to wholly R3 Medium Density Residential.

The changes to the proposed zoning were the result of extensive community consultation and additional ecological studies. The minor amendments to the Proposal, such as updated dates and corrected property details do not change the intent of the Planning Proposal as exhibited and merely add further clarity to the Proposal. This is discussed further below under 9. Assessment.



Figure 2 – Indicative zoning showing Area A in pre-exhibition Planning Proposal document

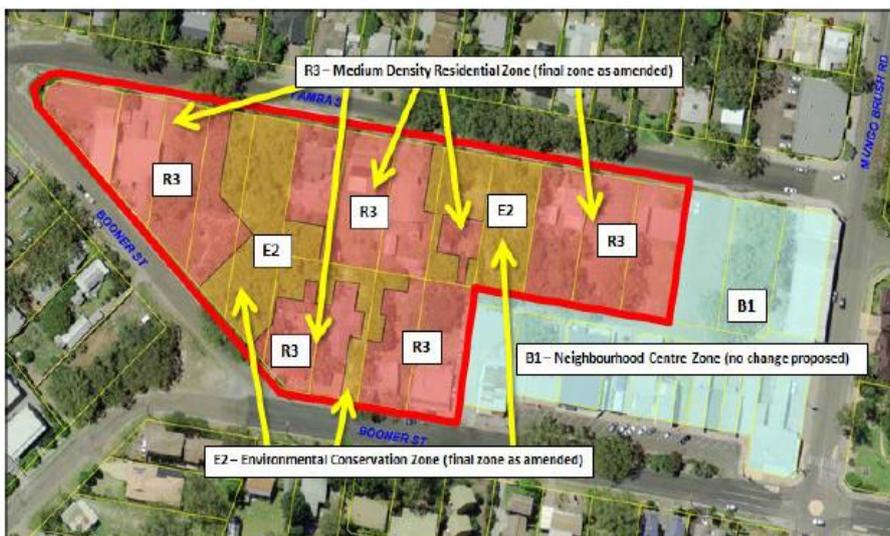


Figure 3 – Proposed land use zones amended because of community consultation

9. ASSESSMENT

The Planning Proposal has merit because it:

- will utilise suitably located land (Area A) that is surplus to business needs for low impact residential development;
- will broaden the range of land uses permitted in Area B, diversifying economic opportunities for locals and tourists;
- will result in a more logical Hawks Nest village centre, providing for additional permanent residential opportunities and supporting existing business;
- responds to the findings of the *Tea Gardens Hawks Nest Conservation and Development Strategy* (2003) and other environmental studies;
- will protect and enhance koala habitat and movement corridors; and
- is consistent with the goals of the Hunter Regional Plan 2036 as it delivers renewal and infill housing opportunities for Hawks Nest.

Issues with the Proposal identified during Plan Finalisation Stage

The Planning Proposal affects the subject land in two ways, by rezoning or, by inclusion in Clause 7.9 Protection of Wildlife Corridors Map in the Great Lakes LEP 2014.

During the Plan Finalisation stage, it was identified that Attachment 1 in the final, updated Planning Proposal does not provide an accurate description of all Lots that will be affected by the Proposal. Attachment 1 is incorrect as it:

- fails to identify all Lots that will be affected by the Protection of Wildlife Corridors Map (e.g. Lot 78); and
- incorrectly describes some Lots as 'Part Lots' when in fact the whole of the Lot is being affected (e.g. Lots 66 and 69).

Although Attachment 1 is incorrect and was exhibited to the public, Attachment 4 and Attachment 5 were also exhibited to the public and these attachments correctly identify the Area A properties.

In response to the discovery that Attachment 1 is incorrect, Council provided a summary of all submissions that were received from landowners of those Lots in Area A that were not wholly identified or were incorrectly described as Part Lots.

Further errors were found with Attachment 1 when Parliamentary Counsel prepared the PC Opinion. Two (2) strata plan numbers were omitted in Attachment 1. However, these strata plan numbers were identified in Attachment 3 by map and by SP number.

It is considered that despite the errors in Attachment 1, Council notified all landowners in affected properties by direct mail and this is demonstrated by the mail merge provided. These landowners were also notified of the Community Workshop that took place as part of the community consultation.

All correct property descriptions and strata plan numbers are contained in the PC Opinion.

Council has determined that there are minimal risks associated with the discrepancies in what was exhibited in Attachment 1 and the land affected by the Proposal. Council is therefore of the view that re-exhibition of the Planning Proposal is not necessary in this instance. It is recommended that the Department support this view.

Section 117 Directions

S 117 Directions 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection require the Secretary's agreement. It is recommended that the Secretary's delegate agree that the Planning Proposal is now consistent with the terms of the Directions and that no further approval is required in relation to the Directions.

4.3 Flood Prone Land

The original Planning Proposal identified that Area A was flood affected. It was determined that the Proposal was inconsistent with clause 5 of Direction 4.3 and that further justification was required to support the inconsistency.

Since preparing the original Planning Proposal, Council's Engineering section has updated Council's Flood Planning Area maps. Tea Gardens and Hawks Nest flood extents are now based on a Current 1% AEP Level of RL 1.4m AHD compared to that from the 'old PWD study' of RL 2.1 AHD. Resultantly, the extent and the number of affected properties has reduced considerably and Area A is no longer affected by flood related development controls.

Condition 2 of the Gateway determination, as it relates to the inconsistency with Section 117 Direction 4.3 Flood Prone Land, no longer applies. In accordance with changes to the Flood Planning Area maps, the Proposal has been amended to remove references to flooding over the land. It is recommended that the Secretary's delegate should agree that an assessment of consistency with this Direction is no longer required.

4.4 Planning for Bushfire Protection

Council has advised that the NSW Rural Fire Service was consulted during the exhibition process in accordance with condition 4 of the Gateway determination. The Planning Proposal is now consistent with S 117 Direction 4.4 Planning for Bushfire Protection.

State Environmental Planning Policies

The draft LEP is consistent with the relevant SEPPs. Consistency with SEPP 44 – Koala Habitat Protection has been resolved by Council working closely with OEH prior to exhibition and during the exhibition stage.

10. MAPPING

There are maps associated with the Planning Proposal. Five map sheets will be revoked as part of the Proposal and six new map sheets will be adopted. The Department's ePlanning team has reviewed the maps and confirmation has been given that they are correct and have been sent to Parliamentary Counsel.

Maps to be revoked	Maps to be adopted
Floor Space Ratio Map FSR_010D - 3320_COM_FSR_010D_020_20140303	Floor Space Ratio Map FSR_010D - 3320_COM_FSR_010D_020_20170724
Height of Buildings Map HOB_010D - 3320_COM_HOB_010D_020_20140303	Height of Buildings Map HOB_010D - 3320_COM_HOB_010D_020_20170724
Land Zoning Map LZN_010D - 3320_COM_LZN_010D_020_20140303	Land Zoning Map LZN_010D - 3320_COM_LZN_010D_020_20170724
Lot Size Map LSZ_010D - 3320_COM_LSZ_010D_020_20140303	Lot Size Map LSZ_010D - 3320_COM_LSZ_010D_020_20170724
Additional Permitted Uses Map APU_010D - 3320_COM_APU_010D_020_20140117	Additional Permitted Uses Map APU_010D - 3320_COM_PWC_010D_020_20170724
	Protection of Wildlife Corridors Map PWC_010D - 3320_COM_PWC_010D_020_20170724

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument on 11 September 2017 (**Attachment E**). Council confirmed on 11 October 2017 that it was satisfied with the draft and that the Plan should be made (**Attachment F**).

12. PARLIAMENTARY COUNSEL OPINION

On 17 October 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made (**Attachment PC**).

13. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP.