

City Strategy Committee Meeting 2 August 2010

10STRAT028 Planning Proposal to Amend LMLEP 2004 - F3 Service Centre

Council Ref: RZ/4/2010 - D01818005
Report By: Strategic Planner - Matthew Hill

Précis:

Council has received a proposal to amend Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to permit with consent, development for the purpose of a service centre. The subject land comprises two sites on either side of, and adjacent to, the F3 Freeway being part of Lot 210 DP 702166 and Lot 211 DP 702166, in the vicinity of Cooranbong and Dora Creek (see Attachment 1).

A Planning Proposal has been prepared in consultation with internal specialist staff (see Attachment 2). In order to proceed with the amendment, the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) requires the Planning Proposal to be issued to the Department of Planning for a Gateway determination. It is likely that the Planning Proposal will be subject to a number of revisions during the LEP amendment process, however, in principle, support is sought from Council to enable the process to commence.

Recommendation:

Council:

- A. Resolves to prepare and support the Planning Proposal contained in Attachment 2 to amend LMLEP 2004 pursuant to the *Environmental Planning and Assessment Act 1979*.
- B. Forwards the proposal to the NSW Department of Planning for determination.
- C. Undertakes consultation with State Government agencies and service authorities if so directed by the Department of Planning.
- D. Notifies the proponent of the progress of the proposal.

Background:

The F3 Freeway (Freeway) is the primary transport corridor in the region, linking the Lower Hunter region with Sydney. The Freeway, which is approximately 130 kilometres in length, currently contains one twin service centre development at Warnervale. This facility provides refuelling of vehicles and restaurant/fast food outlets. A State Government policy is in place that requires at least 24 kilometres between highway service centres, and the Roads and Traffic Authority (RTA) has an agreement with Caltex that no other service centres will be permitted on the Freeway until 2013.

The Lower Hunter Regional Strategy indicates that the population within the Lower Hunter region is expected to increase by approximately 160,000 by 2031. The proposed LEP amendment will enable the establishment of a second twin service centre on the Freeway near Cooranbong that will support additional traffic associated with continued growth in the region.

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The proponent has undertaken a range of detailed studies in support of the proposal including a Traffic and Utility Services Report, Economic Report, Retail Analysis Report, Flora and Fauna Report, and Bushfire Report. Some further site investigations are likely to be necessary as progression occurs through the LEP amendment process.

Proposal:

The proposed amendment to LMLEP 2004 will support the establishment of an additional twin service centre development on the subject land, being part of Lot 210 DP 702166 and Lot 211 DP 702166, which are approximately 25 kilometres from the existing Warnervale service centre. It is proposed that each component of the twin service centre will contain a 24-hour service station, fast food outlets, a cafe, a motel, visitor information/tourist office, as well as car and truck parking facilities.

Consultation:

The proposal was considered by Council's Rezoning Appraisal and Prioritisation Panel on 26 May 2010. The Panel determined that the proposal had merit, and should be investigated further. Internal specialist staff were also consulted to identify additional matters that should be investigated as part of the LEP amendment process. The internal consultation process resulted in recommendations being included in the Planning Proposal for additional studies to be undertaken including:

- Aboriginal Heritage Impact Assessment
- Social Impact Assessment
- Land Contamination and Geotechnical Assessment
- Flooding/Hydrology Assessment
- Scenic Quality/Visual Impact Assessment
- Noise and Vibration Assessment

The Gateway process may recommend studies in addition to these, and further investigations may be necessary to support a future development application.

Implications:

Policy Implications:

Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004)

In order for the proposal to be implemented, an amendment will need to be made to LMLEP 2004. The LEP amendment will comprise rezoning part of Lot 210 DP 702166 and Lot 211 DP 702166 from 1(1) Rural (Production) Zone to either a 5 Infrastructure Zone or a 4(3) Industrial (Urban Services) Zone. It is important that the land is rezoned to provide more relevant zone objectives to the subject land.

The 7(2) Conservation (Secondary) Zone may also be expanded to riparian corridors that are not currently within a conservation zone. However, this will be determined following further investigations. *Schedule 7 – Additional development allowed on certain land* will also need to be amended to permit the additional uses with development consent regardless of which zone is applied to the land.

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The proponent has indicated a desire for certainty in respect of subdividing the remaining rural component of Lot 210 from the land to be developed for the service centre. An additional clause could be implemented to permit subdivision of the remaining rural land from that part of Lot 210 DP 702166 to be used for a service centre, however situations such as this are generally addressed under application pursuant to *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). The final method will be determined through the LEP amendment process.

Standard Instrument

A new citywide LEP for Lake Macquarie is currently being prepared in accordance with the Standard Instrument. The 5 Infrastructure Zone would transfer to the SP2 – Infrastructure Zone under the new LEP, while the 4(3) Industrial (Urban Services) Zone would transfer to the IN2 Light Industrial zone under the new LEP. Whichever zone is used, a clause to permit additional uses will remain necessary; however, it is important for the zone objectives to be relevant to the proposed use of the land.

Building height controls will be transferred from the Development Control Plan No. 1 (DCP) to the new Citywide LEP in accordance with the format of the State Government's Standard Instrument. Since development of the subject land is likely to be assessed under the new Citywide LEP, consideration will need to be given to appropriate building heights for the land. This will occur during the LEP amendment process.

Under the Standard Instrument, minimum lot size provisions will be contained in a map layer rather than in a written schedule. This could enable minimum lot size controls to be implemented in a site specific manner, which would facilitate the proposed subdivision of the site, however, situations such as this are generally assessed under SEPP 1 at the development application stage.

Lifestyle 2020 Strategy

Council's Lifestyle 2020 Strategy contains five (5) strategic directions that set out the desired outcomes for the City. Each of these strategic directions is addressed below.

A City Responsive to its Environment

The subject land is almost entirely clear of vegetation, and the proponent will be required to meet the State Government's 'improve or maintain' policy in terms of biodiversity value on the land. The proponent has indicated that this will be achieved through rehabilitation of the riparian corridor, which will remain within a conservation zone.

The subject land is capable of supporting Asset Protection Zones without significantly affecting existing vegetation, and the land has not been identified as being flood prone or affected by acid sulphate soils.

The proposal provides further support to an existing major transport corridor. It is believed that the proposal is appropriate to support increased freeway traffic as growth continues in the region.

The subject land is capable of supporting the proposed development without significant environmental impacts, provided the appropriate mitigation measures are implemented (e.g. site drainage, spillage containment, etc.). The subsequent development resulting

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The development of the land for the proposed use will provide additional employment opportunities in the local area, while providing services to people travelling through the local government area. The proposal is a stand-alone development that is not related to the establishment of town centres or connectivity within neighbourhoods, and it is intended that the proposed development will be accessible only from the Freeway (although this will be assessed upon receiving a development application for the proposed development).

A Well Designed and Liveable City

The condition of the subject land, being rural land that is not used to support an economically viable rural enterprise, and is almost entirely clear of vegetation, is appropriate for the proposed use of the land. The specific design and siting of the development proposed will be considered upon receiving a development application.

A City of Progress and Prosperity

The Freeway is the primary transport corridor in the region and an increased traffic volume is expected as regional growth continues. The proposal will contribute to the ongoing function of the Freeway as the primary transport corridor, which will provide support for other investment in the region. The proposal will also lead to employment opportunities directly by providing jobs to the local community.

An Easily Accessible City

It is important to ensure that appropriate services are available to traffic using the Freeway, and to ensure its ongoing efficiency as the primary transport corridor in the region. The proposal will provide for the needs of freeway users, and provide a benefit to Lake Macquarie City's economy by capturing some custom from Freeway users that would otherwise occur at the service centres located at Warnervale or Beresfield.

Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals

The proposal has been assessed against the provisions of Council's Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals (see Attachment 3). In summary the proposal complies with the provisions of the Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals.

Policy for Managing Contaminated or Potentially Contaminated Land

The need to investigate the level of contamination, if any, on the subject land has been identified. The contamination investigations will need to be undertaken for the LEP amendment to progress through the process.

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy (LHRS) indicates an expected population growth of 160,000 people, translating to an anticipated demand for 66,000 jobs by 2031. It is likely that the Freeway will remain the primary transport route, linking the region to Sydney and providing a thoroughfare for the north coast. The proposal will support the ongoing role of the Freeway in providing efficient transportation within and through the region and provide jobs to contribute to satisfying the anticipated employment demands.

Lower Hunter Regional Conservation Plan

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The Lower Hunter Regional Conservation Plan outlines biodiversity principles and requirements for the retention and improvement of biodiversity within the region. Due to the subject land being primarily clear of vegetation, and the intention indicated by the proponent to provide rehabilitation works within the existing riparian/conservation corridor, the proposal is likely to meet the 'improve or maintain' biodiversity principle applied by the State Government. Further site investigations and consultation with the Department of Environment, Climate Change and Water is necessary to confirm that the proposal will meet the 'improve or maintain' principle.

State Environmental Planning Policies

The proposal has been assessed against the provisions of State Environmental Planning Policies (SEPP) (see Attachment 4). In summary, the proposal is consistent with relevant SEPPs.

Ministerial Directions

The proposal has been assessed against the provisions of relevant Ministerial Directions (see Attachment 5). In summary, the proposal is consistent with relevant Ministerial Directions except Direction 1.2 – Rural Zones and Direction 6.3 – Site Specific Provisions. It is considered that the inconsistency with these two directions is reasonable, minor and concurrence will be sought from the Director General of the Department of Planning regarding these two directions.

Environmental Implications:

The subject land is primarily clear of vegetation and the removal of vegetation to accommodate the proposed development is likely to be minimal. Lot 210 on the western side of the Freeway currently contains a riparian corridor that is zoned 7(2) Conservation (Secondary) Zone, which will remain. Lot 211 on the eastern side of the Freeway has been substantially disturbed and is currently in a highly degraded state. Riparian corridors on both sites that are not currently within a conservation zone may have a conservation zone applied depending on the outcome of further investigations.

Studies already undertaken outline that the proposal is not likely to have a significant impact, however, additional environmental investigations will be necessary to accurately determine any environmental impacts. The Planning Proposal to be submitted to the Gateway for a determination recommends that additional studies be completed to confirm the appropriateness of the proposal for the subject land.

Social Implications:

The proposal will support the ongoing role of the Freeway as growth continues in the region, and will provide employment opportunities to the local community. The proponent has indicated that the development will provide 472 construction jobs, 99 on-going jobs, and 183 jobs through the multiplier effect (indirect employment opportunities). The extent of further social implications will be examined in a future Social Impact Assessment that has been identified as being necessary by Council's Community Planning department.

Financial Implications:

There will be no specific financial implications for Council apart from use of staff resources in processing the LEP amendment in accordance with Council's LEP amendment process. The proponents have paid the appropriate rezoning fees.

Risk and Insurance Implications:

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The preparation of an amendment to LMLEP 2004 is a regular Council activity governed by the provisions of the EP&A Act 1979. The level of risk attached to this activity will be minimised through following the process as established by the EP&A Act 1979 and *Environmental Planning and Assessment Regulation 2000* (EP&A Reg. 2000) as well as Council procedure.

Options:

1. Council resolves to prepare and support the proposal and forward the Planning Proposal to the Department of Planning for a Gateway determination. This will enable the LEP amendment process to commence, and further advice to be received regarding the need for additional studies and consultation requirements. This is the recommended option.
2. Council does not support the proposal and ceases the LEP amendment process. This option is not recommended as Council staff have assessed the rezoning proposal as having merit.

Conclusion:

In order for the LEP amendment process to commence, it is necessary for Council to prepare and support the proposal and forward the Planning Proposal to the Department of Planning for a Gateway determination. Following consultation with relevant staff, it is considered appropriate to forward the Planning Proposal for consideration under the Department of Planning's Gateway process.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. F3 Freeway service centre maps including locality map aerial photograph and existing zones - 15 July 2010 | D01840665 |
| 2. Planning Proposal - Service Centre F3 Freeway - 29 June 2010 | D01840686 |
| 3. Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals - 15 July 2010 | D01833207 |
| 4. State Environmental Planning Policies - F3 Freeway Service Centre - 15 July 2010 | D01833216 |
| 5. Ministerial Directions - F3 Freeway Service Centre - 15 July 2010 | D01833212 |

Attachment 1 – Maps

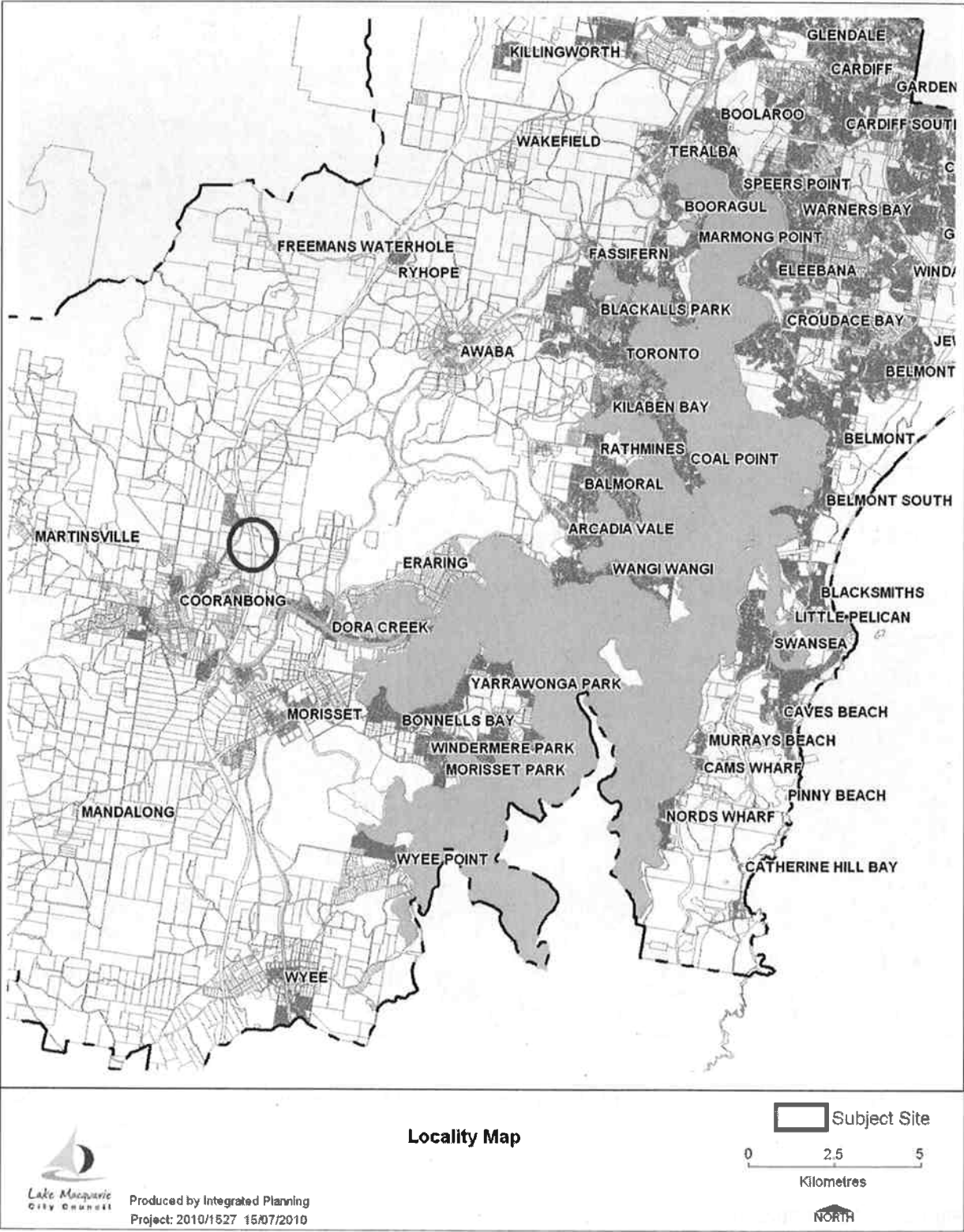


Figure 1 - Locality Map

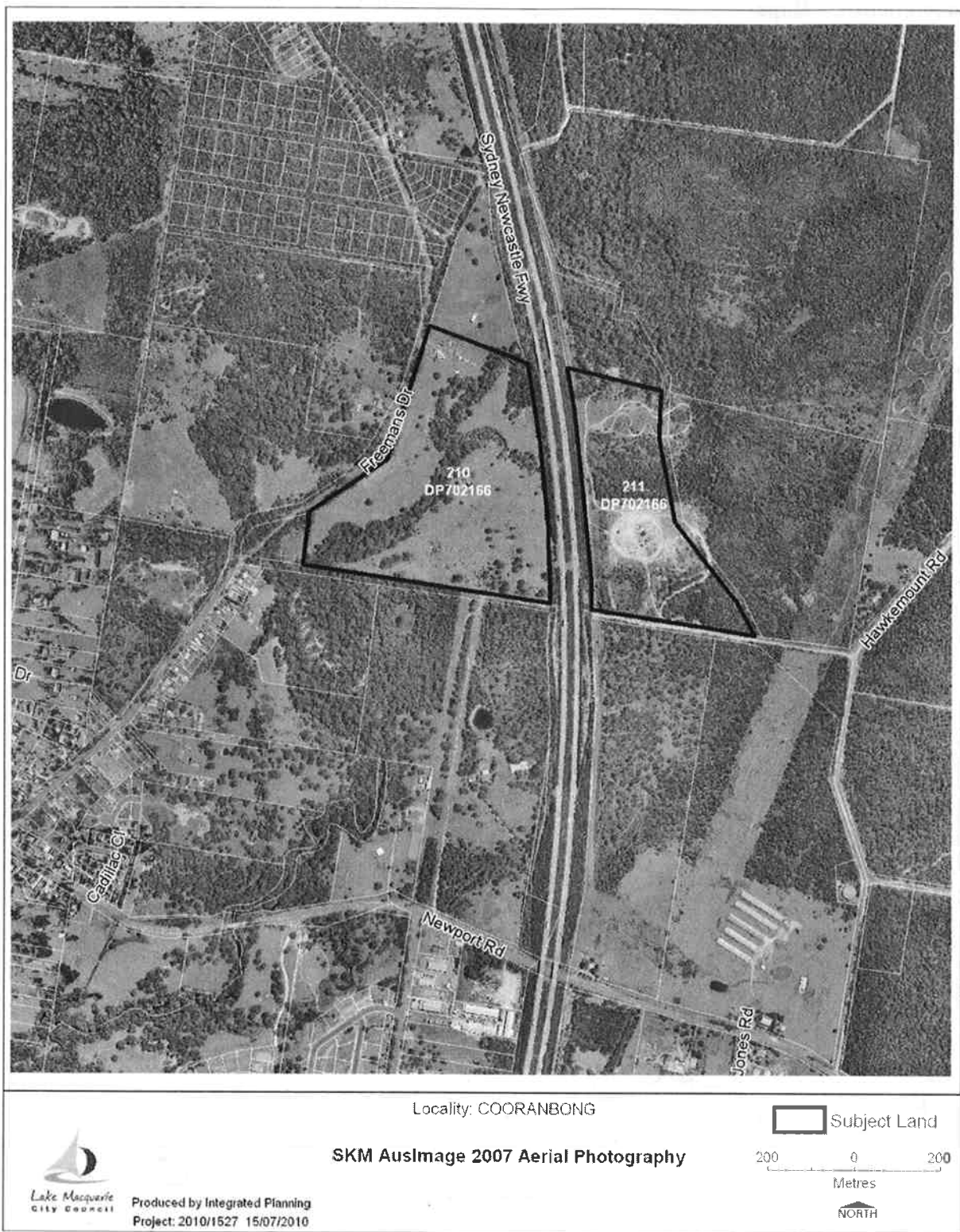


Figure 2 – Aerial Photograph

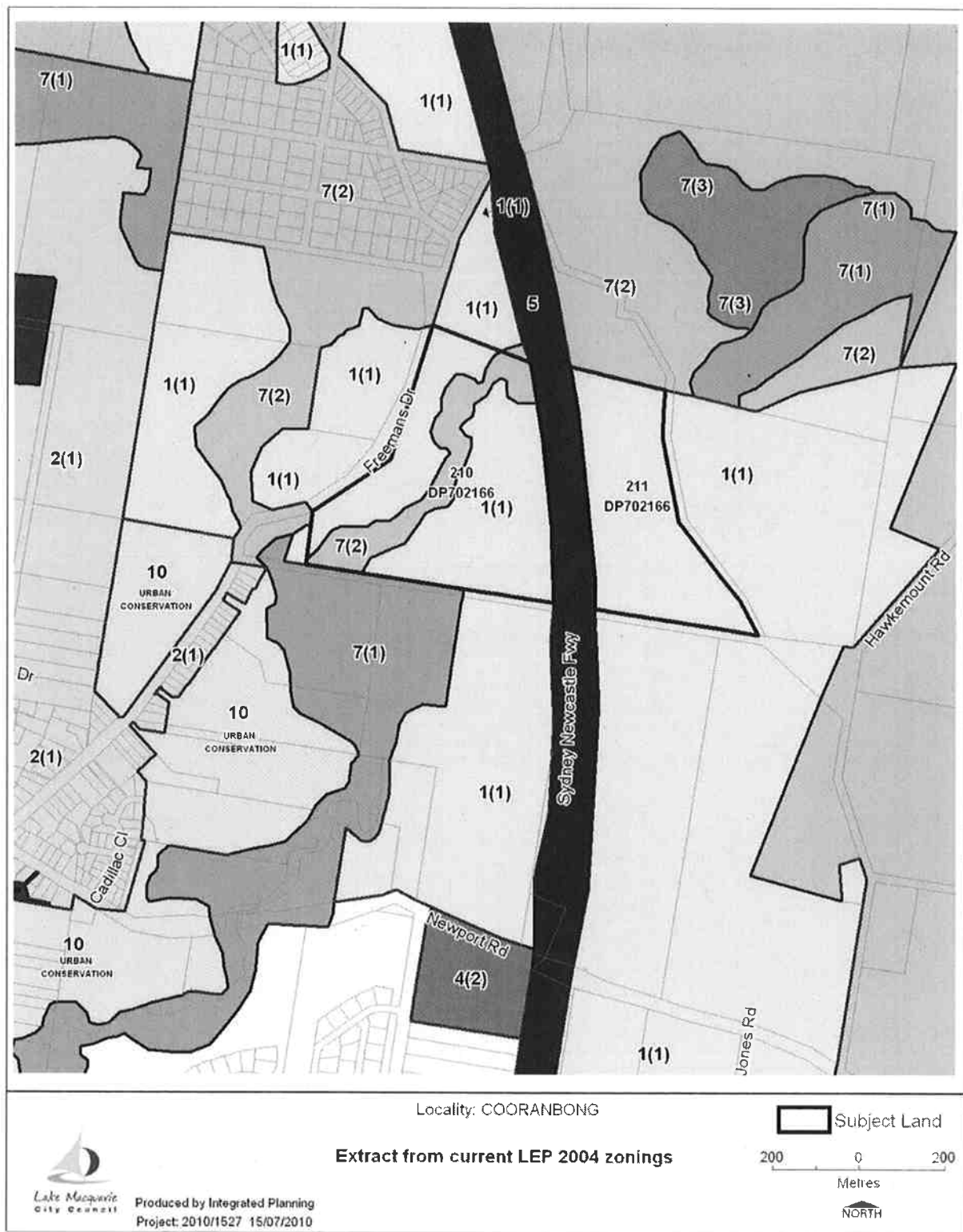


Figure 3 – Existing Zones

**Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposal
F3 Service Centre, Cooranbong**

The Policy objective and principles have been addressed as follows:

Policy	Planning Response
<i>Objective:</i> Retain important natural ecosystems and biodiversity, and maintain landscape connectivity.	Any removal of vegetation as a result of the LEP amendment is likely to be negligible. The riparian/conservation corridor currently contained within Lot 210 DP 702166 will remain.
<i>Principle:</i> No removal of native vegetation or habitat that will result in complete loss of local populations of threatened species, or loss of endangered ecological communities.	The subject land has previously been subjected to substantial land clearing with almost all of the subject land being clear of vegetation. Any vegetation loss as a result of subsequent development of the land is likely to be negligible, however, the precise extent of vegetation loss will be determined under the assessment of any future application for development.
<i>Principle:</i> Maintain quality, condition, connectivity and extent of high quality threatened species habitat, and area of endangered ecological communities on the site.	Due to the minimal vegetation on the site and the unlikely/minimal removal of vegetation necessary to support the proposed development, the impact is likely to be negligible.
<i>Principle:</i> Accept loss of non-significant vegetation communities that are widespread within LGA, provided that >70% native vegetation cover of each of these communities is retained in the whole LGA, as mapped on LMCC 2004 vegetation mapping.	Future vegetation loss from the site is not likely to be significant.
<i>Principle:</i> Maintain existing landscape scale connectivity of native vegetation in corridors with suitable characteristics e.g. width, habitat quality, and area.	The existing riparian corridor will remain within a conservation land use zone.
<i>Principle:</i> Native vegetation in habitat corridors is to be retained by implementing adequate long-term security e.g. zoning, dedication to LMCC, covenant, or acquisition.	The envisaged zone distribution on the site will maintain areas of high biodiversity value including maintaining the existing 7(2) Conservation (Secondary) Zone applying to the riparian corridor on Lot 210 DP 702166.

Policy	Planning Response
<i>Principle:</i> Use of offsets (including protected areas or rehabilitation) may be considered where appropriate. Any offsets must be within the Lake Macquarie LGA, provide long term certainty of tenure, and ensure funding for ongoing management.	Biodiversity offsets are not likely to be required in this instance and the proponent has indicated that rehabilitation will be undertaken within the riparian corridor to meet the 'improve or maintain' biodiversity principle.
<i>Principle:</i> Retention of native vegetation in good condition is preferable to rehabilitation of disturbed areas. Rehabilitation or enhancement must be on land in public ownership and fully funded by the developer.	Removal of vegetation to enable the proposed development on the subject land is likely to be negligible. Further assessment will be undertaken upon submission of a development application.

State Environmental Planning Policies

The following assessment of the proposal against relevant State Environmental Planning Policies (SEPPs) has been undertaken:

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 subsequent 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.	A detailed flora and fauna investigation of the site determined that the subject 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.	Further investigations will be necessary to determine whether the subject land contains contaminants. Where contaminants are identified, remediation will be required in accordance with State Government guidelines and regulations prior to development occurring. At the development application stage, details will also be required regarding any required contamination prevention measures.
SEPP 64 – Advertising and Signage	The SEPP aims to ensure that signage and advertising, particularly in road corridors, is 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 provides provision for consultation and assessment.	Development resulting from the proposal is not likely to require implementation of the provisions of the SEPP.

SEPPs	Relevance	Implications
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.

Ministerial Directions

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 Planning Proposal is not consistent with this direction, however, the proposal is likely to be negligible in terms of its affect on rural lands. Concurrence will be sought from the Director-General in this regard.
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. A flora and fauna assessment of the subject land has determined that a significant impact is not likely to result from the proposal.
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.	Part of the subject land falls within the identified Sensitive Aboriginal Cultural Landscape. As such, an Aboriginal heritage impact assessment is considered necessary to support the proposal.
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.
4.2 – Mine Subsidence and Unstable Land	Aims to ensure development is appropriate for the potential level of subsidence. The direction requires	It is intended that the Mine Subsidence Board will be consulted following the

Ministerial Direction	Relevance	Implications
	consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	Gateway determination.
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 sites contain land identified as bushfire prone land, and Asset Protection Zones will be required. It is intended that consultation with the NSW Rural Fire Service will occur during the amendment process in this regard.
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, however, as growth in the region occurs, the proposal will provide some employment opportunities, and will support increased use of the F3 Freeway.
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	The proposal will not have implications for public land reservations.

Ministerial Direction	Relevance	Implications
	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.	
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 not consistent with this direction, and a site specific provision will be necessary to enable the proposed development on the site. The Director-General's advice will be sought in this regard.