

113 Wyndham Way, Eleebana

Proposal Title : **113 Wyndham Way, Eleebana**

Proposal Summary : **The proposal intends to protect environmentally sensitive land and allow residential development to occur at 113 Wyndham Way, Eleebana. It is proposed to rezone 1.4 ha of the subject site to R2 Low Density Residential and 10.5 ha to E2 Environmental Conservation.**

PP Number : **PP_2013_LAKEM_008_00**

Dop File No : **13/09931**

Proposal Details

Date Planning : **12-Jun-2013**

Proposal Received :

LGA covered :

Lake Macquarie

Region : **Hunter**

RPA :

Lake Macquarie City Council

State Electorate : **CHARLESTOWN**

Section of the Act :

55 - Planning Proposal

LEP Type : **Spot Rezoning**

Location Details

Street : **113 Wyndham Way**

Suburb : **Eleebana**

City :

Postcode : **2282**

Land Parcel : **Lot 414 DP 866775**

DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

Contact Email : **dylan.meade@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Vanessa Hitchcock**

Contact Number : **0249210585**

Contact Email : **vhitchcock@lakemac.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A**

Release Area Name :

N/A

Regional / Sub
Regional Strategy : **Lower Hunter Regional
Strategy**

Consistent with Strategy :

Yes

113 Wyndham Way, Eleebana

MDP Number :

Date of Release :

Area of Release (Ha) **1.40**Type of Release (eg
Residential /
Employment land) :**Residential**No. of Lots : **30**No. of Dwellings
(where relevant) :**4**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 :

Supporting notesInternal Supporting
Notes :

The Department received Section 54(4) under the former plan-making provisions to 'rezone land at Eleebana from 10 Investigation, 2(1) Residential and 6(1) Open Space to appropriate zones to support urban development and conservation'. The DG on 28 August 2008 advised that a local environmental study (LES) should be prepared for the site.

It is understood that Council did not request the draft LEP be converted into a planning proposal in July 2009 with the introduction of the current plan making provisions. The draft LEP was not converted to a planning proposal.

An LES was finalised on 23 August 2010. The LES did not investigate the western portion of the site due to the presence of EEC on this portion of the land; it had already been decided by Council to rezone this area of land to environmental protection.

Council previously undertook Section 62 Consultation during preparation of the LES. This planning proposal identifies different residential zone locations compared those contained in the LES.

External Supporting
Notes :**Adequacy Assessment****Statement of the objectives - s55(2)(a)**Is a statement of the objectives provided? **Yes**

Comment :

The statement of objectives provided explains that the proposal intends to permit residential development on part of Council owned land and to conserve the remainder of the land. This is supported.

Explanation of provisions provided - s55(2)(b)Is an explanation of provisions provided? **Yes**

Comment :

The explanation of provisions provided explains that the proposal will be achieved through an amendment to the zoning map of either the Lake Macquarie LEP 2004 or (depending on timing) the Lake Macquarie LEP 2013. This is supported.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

2.1 Environment Protection Zones

* May need the Director General's agreement

3.2 Caravan Parks and Manufactured Home Estates

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas

SEPP No 44—Koala Habitat Protection

SEPP No 71—Coastal Protection

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

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The proposal indicates a 28 day exhibition period will be undertaken. This is supported.

The planning proposal contains a project plan which indicates the plan will be finalised by December 2013. Given issues relating to threatened species, it is considered a 12 month time frame is more suitable.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **November 2013**

Comments in relation to Principal LEP : **The Lake Macquarie LEP 2013 is due for completion by November 2013.**

Assessment Criteria

Need for planning
proposal :

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

The proposal is the result of an Local Environmental Study (LES) prepared in accordance with the Department's specifications. These specifications were outlined by the Department in a response to Council's Section 54(4) Notification under the former plan-making provisions on 28 August 2008.

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

It is considered that a planning proposal is the best means of facilitating residential development while protecting environmental sensitive areas.

3. Is there a community benefit?

A Social Impact Assessment was prepared as part of the LES. The SIA concluded that the proposed development assist in meeting the target for an additional 7,000 infill dwellings for the LGA under the Lower Hunter Regional Strategy, as well as providing housing for the predicted increase in population in the Lake Macquarie LGA. It is considered that the proposal will result in a net community benefit.

Consistency with
strategic planning
framework :

LOWER HUNTER REGIONAL STRATEGY (LHRS)

The LHRS identifies the subject site as within an existing urban area. The planning proposal is considered consistent with the LHRS, specifically actions relating to Councils revising their LEPs to be consistent with the identified urban footprint and promotion of consolidation.

LOCAL PLANNING STRATEGIES

The Lake Macquarie Lifestyle 2030(not endorsed) identifies the subject site as an urban area. The proposal is considered consistent with the local planning strategy.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

*SEPP 19 – Bushland in Urban Areas

The proposal is considered consistent with the aims of this SEPP through the proposed rezoning of 10.4 ha of land to E2 which will enable the protection and preservation of bushland within urban areas. The proposal is considered specifically consistent with aims relating to:

- the retention of bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term, and
- the protection of wildlife corridors and vegetation links with other nearby bushland.

SEPP 44 – Koala Habitat Protection

The planning proposal indicates that the subject site contains Koala food tree species, listed in Schedule 2 of SEPP 44 (Grey Gum *Eucalyptus punctata*, Swamp Mahogany *E. robusta* and Forest Red Gum *E. tereticornis*). The proposal is considered consistent with the SEPP as the area in which these species occur is proposed to be zoned for conservation purposes.

SEPP 71 – Coastal Protection

The subject site is within the coastal zone. The proposal is considered to be consistent with the provisions of this SEPP as the visual amenity of the coast is protected and public access to and along coastal foreshores will not be affected.

SECTION 117 DIRECTIONS

The following S.117 Directions are considered applicable to the proposal:

*2.1 Environment Protection Zones

The planning proposal is considered inconsistent with this Direction as it does not include provisions that facilitate the protection and conservation of environmentally sensitive areas. The proposal identifies the entire site as containing environmentally sensitive areas, and although the majority (10.5 ha) is proposed to be protected through rezoning to E2 Environmental Conservation, 1.4 ha is proposed to be rezoned to R2 Low Density Residential.

The proposal's inconsistency with this Direction cannot be justified by the LES (being a study prepared in support of the planning proposal which gives consideration to the objectives of this direction) as the location of the proposed residential zone in the planning proposal is different from the location of the residential area identified in the LES (shown in attached 'Map LES and PP boundaries'). Although, the planning proposal proposes to rezone a smaller area of land to residential compared with the LES (which identified 2.4 ha as suitable for residential development), the proposed residential zone in the planning proposal potentially has a greater impact on a regionally significant community of *Tetratheca juncea*.

It is understood the proposed residential area in the LES has been modified to enable existing infrastructure to be utilised, and to avoid impacts on Hunter Water sewerage infrastructure. The modified location of the proposed residential development may result in a reduced impact on the environmentally sensitive land from infrastructure provision. It should also be noted that the proposal results in an increase in environmental zoned land. The planning proposal will result in 1.4 ha of the site zoned residential, which is a

reduction from the 3.4 ha currently zoned residential.

It is recommended that Council undertakes consultation with OEH to determine if the inconsistency with this Direction is justified or of minor significance, and if the proposed residential zone in the PP maintains biodiversity outcomes for the site.

***3.2 Caravan Parks and Manufactured Home Estates**

The proposal is inconsistent with this Direction as by rezoning land from 6a Open Space to R2 and E2 it does not retain provisions that permit development for the purposes of a caravan park to be carried out on. It is considered that the inconsistency is of minor significance as the proposal only results in a loss of 2ha of 6a Open Space, and the existing zoning is not configured to practically allow development of a caravan park

***4.2 Mine Subsidence and Unstable Land**

As the planning proposal permits development on land that is within the Lake Macquarie Mine Subsidence District, Council must consult the Mine Subsidence Board as per the requirements of this Direction.

***4.3 Flood Prone Land**

The planning proposal indicates that part of the site is flood affected. The planning proposal is considered consistent with this Direction as it does not propose to zone flood affected land to residential.

***4.4 Planning for Bushfire Protection**

The RFS previously provided comments under Section 62 of the former plan-making provisions, and did not object to the draft LEP. However as the planning proposal will affect land mapped as bushfire prone land, Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation.

Environmental social
economic impacts :

ENVIRONMENTAL

The proposal indicates that development of the part of the site will impact upon two species listed as vulnerable (squirrel glider and tetratheca juncea) under the Threatened Species Conservation Act 1995.

The proposal indicates that the squirrel glider has not been recorded on the site in ecological studies since 1995, however, the proposed residential area contains habitat trees associated with squirrel glider. It is considered the loss of 1.4 ha will result in a minor impact, as the majority of the site's squirrel glider habitat trees, as well as a regionally significant squirrel glider corridors, will be rezoned to E2.

The proposal indicates that the area proposed to be rezoned for residential purposes has been cited to minimise disturbance to known tetratheca juncea and aims to achieve 78% retention. This is within the retention rate outlined by Lake Macquarie City Council Tetratheca juncea Conservation Management Plan. However, it is unclear if the retention rate applies to the proposed residential area identified in the LES, or in this planning proposal.

It is recommended that Council consult with the OEH to determine impacts upon species identified in the Threatened Species Conservation Act 1995. Consultation should occur prior to exhibition in case the outcomes of discussions with OEH require Council to amend the residential zone boundaries.

SOCIAL AND ECONOMIC

As discussed, the SIA prepared as part of the LES concluded that the proposed development will assist in providing housing for the predicted increase in population in the Lake Macquarie LGA. The development will also result in positive economic impacts associated with increased employment from housing construction.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 Month** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage
Mine Subsidence Board
NSW Rural Fire Service**

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 :

An LES was finalised on 23 August 2010, with a number of studies prepared in support of the proposal. Although, the planning proposal modifies the location of the proposed residential area, no further studies are considered necessary to support the proposal.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **It is considered that the site be identified as an Urban Release Area to ensure satisfactory arrangements are in place for state infrastructure.**

Documents

Document File Name	DocumentType Name	Is Public
D01889664 Final Report - Local Environmental Study - 113 Wy.pdf	Study	Yes
report and resolution.pdf	Proposal Covering Letter	Yes
Departments letter August 2008.pdf	Determination Document	Yes
Eleebana Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions: **2.1 Environment Protection Zones
3.2 Caravan Parks and Manufactured Home Estates
4.2 Mine Subsidence and Unstable Land
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection**

Additional Information : **The planning proposal should proceed subject to the following conditions:**

1. Prior to undertaking public exhibition, Council is to consult with the Office of Environment and Heritage to determine if the location of the proposed residential zone minimises impacts on threatened species and is consistent with the prepared LES.
 2. Prior to undertaking public exhibition, Council is to amend the planning proposal to identify the subject site as an Urban Release Area.
 3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 14 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
 4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage (S117 Direction 2.1 Environment Protection Zones)
 - Mine Subsidence Board (S117 Direction 4.2 Mine Subsidence and Unstable Land)
 - NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)
- Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
5. A public hearing is not required to be held into the matter under section 56(2)(e) of the EP&A Act. However, a public hearing is required to be held into the matter in accordance with the department's practice note PN09-003, as the planning proposal involves a reclassification of land from community to operational.
 6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

It is recommended that the Minister's delegate advise Council that the proposal's inconsistency with Section 3.2 Caravan Parks and Manufactured Home Estates is of minor significance.

Council have not requested use of plan-making delegations. It is not recommended that plan-making delegations are given to Council as the subject site is owned by Council.

Supporting Reasons :

The proposal is supported as it is based on a Local Environmental Study and protects 10.5 ha of environmentally sensitive land. Further consultation with OEH is required to determine the level of impact the proposed 1.4 ha of residential area will have on species listed under the Threatened Species Act 1995.

Signature:



Printed Name:

KO'FLAHERTY

Date:

21-6-2013



Eleebana LES

Potential Developable Area

Regulated Boundary

(75% *T. juncea* retained)

KEY

- EEC Area
- Original EEC Boundary (Study Area Boundary)
- Revised EEC Boundary (Including 20m Vegetation buffer)
- Habitat Trees
- T. juncea* Individuals
- T. juncea* 20m buffer
- T. juncea* Habitat
- Regulated Boundary
- Squirrel Glider Habitat/Offset Area
- APZ Bushfire Buffer
- Vegetation Setback (extension of est. rehabilitation corridor)
- Watercourse Alignment
- Riparian Buffer
- 100 year Flood ARI
- Potential Access
- Biorention Catchment Division
- Native Vegetation Corridor (LMCC) - Crossing Point
- Native Vegetation Corridor (LMCC) - less than 200m width
- Native Vegetation Corridor (LMCC) - Rehabilitation Corridor

0 25 50 100 Metres

Scale @ A4 1:3,500

2(a) Zone proposed in PP