

Amendment 2 Lake Macquarie LEP 2014 (formerly Amendment 86) - Reclassification of various sites from Community to Operational Land & Rezoning

Proposal Title : **Amendment 2 Lake Macquarie LEP 2014 (formerly Amendment 86) - Reclassification of various sites from Community to Operational Land & Rezoning**

Proposal Summary : **The proposal seeks to reclassify seven parcels of Council owned land within Lake Macquarie LGA from Community Land to Operational Land. The proposal also seeks to rezone three of these sites, two from Open Space to Residential zonings, and one from Open Space to a Tourism zoning.**

PP Number : **PP_2013_LAKEM_013_00** Dop File No : **13/15470**

Proposal Details

Date Proposal Lodged with DOP : **15-Oct-2013** Date Proposal Uploaded to Public Website : **27-Oct-2013**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **None**

Gateway Determination

Decision Date : **01-Nov-2013** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **08-Aug-2015**

Implementation

Implementation Start Date : **08-Nov-2013** Exhibition Duration : **57**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

Agency Objections : **No**

If Yes, comment :

Documentation consistent with Gateway : **Yes**

If No, comment :

The amendment will reclassify seven parcels of Council owned land from Community Land to Operational Land. It will rezone three of these sites; two from Open Space to residential zones, and one from Open Space to a tourism zone.

Planning Proposal PP_2013_LAKEM_013_00 was reviewed and determined by the Regional Director, Hunter & Central Coast Region, as delegate of the Minister, in accordance with Section 56(2) of the Environmental Planning and Assessment Act 1979 on 1st November 2013. The Regional Director determined that the Planning Proposal should proceed subject to conditions. The conditions are discussed below. All conditions of the Gateway determination have been met.

The Local Environmental Plan incorporates seven sites:

Sites 1 & 2 8C Main Road, Cardiff heights (Lot 41 DP 556474) & 58C Marshall Street New Lambton Heights (Lot 42 DP 556474).

Two adjoining sites, zoned R2 Residential under the Lake Macquarie Local Environmental Plan 2014. The sites have a total area of 69.6m² with no street frontage.

In 2012 council sold three parcels of land that adjoin the subject lots, to the NSW Roads and Maritime Service (RMS) for the purpose of future road works. At this time RMS indicated an intention to acquire the subject sites for future road works.

The lots were acquired by Council in the 1970's for the construction of a new road. This road was never built and is no longer an intention of Council. The lots were never dedicated as a road, nor advertised as Operational Land during the transitional provisions of the Local Government Act 1993. Reclassification of the land is therefore required to enable their sale to RMS.

Site 3 Part 11 Luprena Close, Charlestown (Lot 22 DP 249304)

The subject site is 1842m², currently zoned RE1 Public Recreation. The reclassification and rezoning only affects 15m² of the site. The site was dedicated as a public reserve upon registration in 1975.

Encroachment of the 4.6m access way has been identified, seemingly from survey errors during development assessment. Rectification of the encroachment affects 15m² of the public reserve and will result in the access way being reduced to 4.1m.

In addition to the removal of the Public Reserve Status of the subject land, the LEP will also remove an 88b Restriction of User Instrument which contains restrictions that refer to the electricity easement and onsite substation which are located in another area of the parent lot. Removing this restriction will have no effect on the easement or substation.

Site 4 Part of 320 Pacific Highway Charlestown (Part of Lot 100 DP 706965)

The 400m² portion of the site affected is currently zoned RE1 Public Recreation. An unauthorised structure (rotunda) has been constructed on the site by previous owners of the neighbouring Apollo Hotel. The new owners of the Apollo Hotel have requested to purchase the land.

The portion of land proposed to be sold is required to be reclassified to Operational Land and rezoned to SP3 Tourism, which is consistent with the adjoining zoning of the remainder of the Apollo Hotel.

In addition to the reclassification and rezoning, the LEP removes four restrictions which relate to a drainage easement, water supply easement, transition line easement and a sewage easement. None of the easements are located within the portion of the lot subject to the amendment.

Site 5 88 Nelson Street, Edgeworth (Lot 102 DP 241213)

The subject site has an area of 290.9m² and is zoned RE1 Public Recreation. The site was dedicated to Council in 1971 as a Public Reserve by the previous land owner, the City of Newcastle Gas and Coke Co Ltd.

The site is not utilised as public open space and is currently fenced in with neighbouring properties. A large area of open space, utilised by the public is located opposite the site.

An adjoining land owner has requested to purchase the land to make better access ways into the adjoining land soon to be developed for residential purposes.

The LEP will remove the Public Reserve Status of the land.

Site 6 256 Lake Road, Glendale (Lot 12 DP 5677077)

The subject site, zoned R2 Residential with an area of 6509m², was gifted to Council in 1972 to be used for aged care purposes. The previous land owner was under no obligation.

In 1975 a report was submitted to Council stating that Council did not have the funds to construct and manage an Aged Care Facility.

Council has again reviewed the sites suitability for an Aged Care Facility, and determined it is not appropriate, due to bushfire and mine subsidence issues. The site is heavily vegetated, and located adjacent to heavily vegetated land zoned for conservation. The site is sloping, and located a significant distance from public transport and basic services such as community facilities and retail premises. The site would not comply with the requirements of the SEPP (Housing for Seniors and People with a Disability) 2004.

The LEP will remove a 1955 Covenant which contains restrictions on:

1. Coal and other minerals which is now covered under a standard covenant;
2. Pitfalls or subsidence , agreement with Mine Subsidence Board has been obtained;
3. Fence Erection restrictions which are now covered by the Dividing Fences Act;
4. Prohibition of noxious land uses which are now controlled by LEP land zoning.

Site 7 Part of 17 Walker Street, Warners Bay (Lot 31 DP 718196)

The subject site is 635m², currently zoned part R3 Medium Density under the Lake Macquarie Local Environmental Plan 2014.

The lot was dedicated public reserve in 1985. Council purchased the land with the intention was to use the land to facilitate a road through to a neighbouring street. The local road proposal has since been abandoned. The owner of a neighbouring lot has approached council with a request to purchase some of the subject site. The neighbouring lot has insufficient frontage (3.66m wide) to allow development under existing planning controls. Reclassification and sale of the subject site will allow unused and unrequired land to permit suitable development in this locality.

The LEP will remove Public Reserve Status of the land, as well as a Qualified title restriction which involved a caution to check verification of dealings on the land. The restriction is not valid, with Council confirming it holds the Certificate of title for this land

Consultation

Public Exhibition

The Planning Proposal was exhibited in excess of the requirement of the Gateway Determination of 28 days, from 16 December 2013 to 10 February 2014 (8 weeks). This extended period accommodated the Christmas/New Year break. Three of the properties received submissions:

8c Main Road Cardiff Heights (Site 1&2)
General submission in support of the proposal.

11 Luprena Close, Charlestown (Site 3)
Concerns were raised on the uncertainty of the size of the proposal and the future possible uses of the land.

Council confirm there is no intention to do anything other than deal with the minor encroachment by an adjoining property. The encroachment by the adjoining owner seems to have been created by a survey and set out error and not a blatant disregard of boundaries.

88 Neilson Street, Edgeworth (Site 5)
The submission from the potential future purchaser raised questions regarding the need for the land to be purchased given its proposed future use. This is not a matter to be dealt with at this stage.

Public Hearing

A public hearing was held on 1 April 2014. Four members of the public attended. The following issues were raised in regards to land at Site 3, 11 Luprena Close, Charlestown:

1. As Council will be selling the land encroached by the adjoining land owner to such owner, the participants expressed the view that special consideration should not be given in this circumstance and the encroachment should be rectified by the adjoining owner and the land not be sold by Council.

Council have determined it still wishes to proceed with the reclassification and intends to sell the land. The encroachment by the adjoining owner seems to have been created by a survey and set out error.

2. Clarification on how much land is to be reclassified, with wording of the public hearing notification suggesting a larger parcel of land is intended to be reclassified, so that additional development can take place.

Council confirm that the reclassification is for the 15.6 m² strip only and would not support the reclassification or rezoning of the balance of the site.

3. The participants have heard rumours that flats are to be constructed on the site.

Council confirm there is no intention to do anything other than deal with the minor encroachment by an adjoining property.

Agency consultation

The Gateway determination required Council to consult with the NSW Rural Fire Service and the Mine Subsidence Board. Both Agencies made submissions regarding Site 6, 256 Lake Road, Glendale.

The NSW Rural Fire Service do not have an issue with the site accommodating a single residential dwelling, subject to any future development complying with the requirements of Planning for Bushfire Protection 2006. It notes however, that the site is not considered appropriate for an aged care development or subdivision because of the high bushfire risk of the site.

The Mine Subsidence Board also objects to any additional development on this

site, other than a single dwelling, due to mine subsidence risk in the locality. No objections or issues were raised on the remaining properties.

Section 117 Directions and State Policies

The Gateway Determination dated 1 November 2013 advised that the Planning Proposal's inconsistencies with Section 117 Direction 4.1 Acid Sulphate Soils is of minor significance and no further approval would be required in relation to this direction.

In relation to direction 6.2 Reserving Land for Public Purpose, the Regional Director also approved the reduction of land for public purpose on the basis that there is adequate supply of open space and the sites involved are of a small size. No further approval is required in relation to this direction.

The following Section 117 Directions remain relevant;

4.2 Mine Subsidence and Unstable land

All sites are identified within a Mine Subsidence District.

The Mine Subsidence Board has been consulted. It advised that the board would not support subdivision or development other than a single dwelling on the Glendale site (site 6).

No other objections to the plan were made. The requirements of the direction have been satisfied.

4.4 Planning for Bushfire Protection

All sites, with the exclusion the 11 Luprena Close, Charlestown (Site 3) are identified within the Lake Macquarie Bushfire Prone Map.

Consultation with NSW Rural Fire Services has been undertaken, as required by the direction.

While the RFS has no objections, it considers the Glendale site (site 6) as only suitable for a single dwelling rather than seniors living due the high bushfire risks that exists.

No other objections to the plan were made. The requirements of the direction have been satisfied.

State Environmental Planning Policies

The following State Environmental Planning Policies (SEPPs) are relevant to the Planning Proposal:

State Environmental Planning Policy 71- Coastal Protection

Site 7, 17 Walker Street, Warners Bay, is identified as being within the Coastal Zone. Part 8 of the SEPP identifies the relevant matters for consideration when preparing a LEP in the coastal zone. These matters will be address within Councils planning controls. The site is located within the existing urban footprint, and considered to be residential infill. Reclassification and sale of the land are not considered inconsistent with the SEPP.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

As the public reserve status of sites 3 (11 Luprena Close, Charlestown), 5 (88 Neilson Street, Edgeworth) and 7 (17 Walker Street, Warners Bay) will be removed, certain exemptions within the SEPP will no longer apply. This is considered appropriate and consistent with the intent of the plan and the SEPP.

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Make the Plan

A PC Opinion was issued on 20 February 2015. Council was consulted in accordance with s59(1) and accepted the drafting of the instrument. On 1 July 2015, the Governor approved the extinguishment of interests for the required sites, as discussed above. The plan can now be finalised.

Timeframe Extension

The Gateway determination was amended by extending the time for completion of the planning Proposal by a total of 12 months. The Planning Proposal is due before the 8 August 2015.

LEP Assessment

Date Received from RPA : **15-Sep-2014**

LEP Determination

Date Publish Notification

Date sent to Parliamentary Council to Draft LEP : **05-Jan-2015**

Determination Date :

Determination Decision :

Notification Date :