

Lake Macquarie LEP 2004 (Amendment 86) - Reclassification of various sites from Community to Operational Land & Rezoning

Proposal Title :	Lake Macquarie LEP 2004 (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 Planning Proposal Received :	15-Oct-2013	LGA covered :	Lake Macquarie
Region :	Hunter	RPA :	Lake Macquarie City Council
State Electorate :	LAKE MACQUARIE	Section of the Act :	55 - Planning Proposal
LEP Type :	Reclassification		

Location Details

Street :	8c Main Road		
Suburb :	City :	Cardiff Heights	Postcode : 2285
Land Parcel :	Lot 41, DP 556474 - Zone 2(1) Residential		
Street :	58c Marshall Street		
Suburb :	City :	New Lambton Heights	Postcode : 2305
Land Parcel :	Lot 42, DP 556474 - Zone 2(1) Residential		
Street :	17 Walker Street		
Suburb :	City :	Warners Bay	Postcode : 2282
Land Parcel :	Part of Lot 31, DP 718196 - Partly Zone 2(2) Residential (Urban Living) and partly Zone 7(2) Conservation (Secondary)		
Street :	256 Lake Road		
Suburb :	City :	Glendale	Postcode : 2285
Land Parcel :	Lot 12, DP 567707 - Zone 2(1) Residential		
Street :	88 Neilson Street		
Suburb :	City :	Edgeworth	Postcode : 2285
Land Parcel :	Lot 102, DP 241213 - Zone 6(1) Open Space		
Street :	11 Luprena Close		
Suburb :	City :	Charlestown	Postcode : 2290
Land Parcel :	Part of Lot 22, DP 249304 - Zone 6(1) Open Space		

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Street : **320 Pacific Highway**
Suburb : City : **Charlestown** Postcode : **2290**
Land Parcel : **Part of Lot 100, DP 706965 - Zone 6(1) Open Space**

DoP Planning Officer Contact Details

Contact Name : **Susan Blake**
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RPA Contact Details

Contact Name : **Andrejs Rubenis**
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DoP Project Manager Contact Details

Contact Name :
Contact Number :
Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	Other
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	8	No. of Dwellings (where relevant) :	0
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 notes

Internal Supporting Notes : **Council resolved at their meetings on 26 November 2012 and 8 July 2013 to support the preparation and lodgement of this Planning Proposal.**

Council submitted this Planning Proposal to the Department of Planning and Infrastructure in mid September requesting a Gateway Determination to enable amendments to Lake

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Macquarie LEP 2004 (or the pending draft Lake Macquarie LEP 2013) pursuant to section 56 of the EP&A Act 1979.

Subsequent to discussions between Council and the Department seeking clarification of several matters, Council submitted an amended Planning Proposal on 15 October 2013 to reflect the recommended changes.

The Planning Proposal intends to discharge interests from Council owned land, under section 30 of the Local Government Act 1993. Consequently, plan making functions should not be delegated to Council.

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 satisfactorily outlines the intended outcomes of the Planning Proposal (PP) which aims to rezone and reclassify Council owned land. The statement of objectives is supported.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : The PP aims to amend the Lake Macquarie LEP 2004 (LM LEP 2004) through changes to Schedule 3 and the land zoning maps. If completion of this PP is achieved after the pending Comprehensive Lake Macquarie LEP 2013 (LM LEP 2013) is published, the objectives will be achieved instead through amendments to Schedule 4, and amendments to the Land Use Zoning map, Minimum Lot Size map and Height of Building map of LM LEP 2013. The explanation of provisions 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 :

* May need the Director General's agreement

2.2 Coastal Protection
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.2 Mine Subsidence and Unstable Land
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? Yes

c) Consistent with Standard Instrument (LEPs) Order 2006 : No

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas
SEPP No 71—Coastal Protection
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Housing for Seniors or People with a Disability) 2004

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

* SEPP No.19 Bushland in Urban Areas
In accordance with Schedule 1 of the SEPP, this policy applies to Lake Macquarie LGA. Although the PP includes Public Reserve and Open Space zoned sites, no areas subject of this PP currently contain urban bushland. The proposal is therefore consistent with cl.10 of this SEPP.

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*** SEPP No.71 Coastal protection**

17 Walker Street Warners Bay, is identified as being within the coastal zone. Reclassification of the land to operational status enables Council to potentially sell the land. Part 8 of SEPP 71 identifies the relevant matters for consideration when preparing an LEP in the coastal zone. These matters can be adequately addressed under Council's existing local planning controls and development assessment process. Sufficient information has been provided to support the proposal.

*** SEPP No (Exempt and Complying Development Codes) 2008**

Upon removal of the public reserve status of part of 17 Walker Street Warners Bay, 88 Neilson Street Edgeworth and part of 11 Luprena Close Charlestown, certain exemptions on the use of the SEPP under the General Housing Code and Rural Housing Code will no longer apply in accordance with Clause 1.19(6)(b). However, sufficient information has been provided to support the proposal.

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 : Council has proposed a minimum 28 days for public consultation as the PP includes reclassification and rezoning of land. Council has identified that a public hearing will be required under the Local Government Act. This community consultation is supported.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **Ministerial Section 117 Directions**

*** 2.2 Coastal Protection**

Under cl.3, the s.117 Direction applies if the PP includes land within the coastal zone as defined under the Coastal Protection Act 1979. 17 Walker Street, Warners Bay, is identified within the coastal zone. Reclassification of land to operational status enables Council to potentially sell the land, however there is no change to the zone nor any other development controls. Any potential future development of the land can be adequately addressed under Council's existing local planning controls and development assessment process, and would need to be consistent with the SEPP and supporting documents. The proposal is considered consistent with this direction.

*** 3.1 Residential Zones**

Four sites are identified within a residential zoning. The reclassification and rezoning's proposed within this PP will allow for the sale of the subject lots to facilitate future residential development in the subject areas.

In accordance with the objectives, cl.4 and 5, the PP includes provisions that are consistent with this s.117 Direction.

*** 3.4 Integrated Land Use and Transport**

It is proposed to rezone 88 Neilson Street Edgeworth, and part of 11 Luperna Close Charlestown, to residential zonings consistent with adjoining residential lots. It is also proposed to rezone part of 320 Pacific Highway Charlestown to a tourist zoning consistent with an adjoining established tourist use.

In accordance with the objectives and cl.4, the PP includes provisions that are consistent with the s.117 Direction.

*** 4.1 Acid Sulfate Soils**

Under cl.5 of this s.117 Direction, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing appropriateness of the change of use given the presence of ASS.

Two sites are identified as having ASS. 17 Walker Street, Warners Bay (Category 3 ASS) and 88 Neilson Street, Edgeworth (Category 5 ASS). The rezoning and reclassification of land will enable intensification of the land. These lands can be managed as part of any future development process using provisions within the LM LEP 2004 or pending draft LM LEP 2013. Therefore matters relating to acid sulfate soils can be adequately addressed under existing legislative provisions and local planning provisions.

Consequently, in accordance with cl.8(b) of this s.117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s.117 Direction are of minor significance.

*** 4.2 Mine Subsidence and Unstable Land**

In accordance with cl.4(a) of the s.117 Direction when preparing a PP that would permit development on land within a Mine Subsidence District, Council must consult with the Mine Subsidence Board. All sites within this PP are identified within a Mine Subsidence District.

Once a reply is received from the Mine Subsidence Board, consistency with this s.117 Direction can be determined.

*** 4.3 Flood Prone Land**

Under cl.3 of the s.117 Direction, this Direction applies when a PP creates, removes or alters a zone or provision that affects flood prone land. 17 Walker Street Warners Bay is identified as flood prone land, however the site is only proposed to be reclassified and no change to the zoning of the site is proposed. The reclassification is considered consistent with the s.117 direction. Any potential impacts resulting from future development continue to be able to be addressed through local flood planning provisions of LM LEP 2004 or draft LM LEP 2013 at the DA stage.

*** 4.4 Planning for Bushfire Protection**

Under cl.3 of the s.117 Direction, this Direction applies if the PP will affect, or is in proximity to land mapped as bushfire prone land. All sites (with the exclusion of 11 Luperna Close Charlestown) are identified as being bushfire prone. All sites are being reclassified to operational land. Consequently Council is able to sell the land for future development. Potential impacts resulting from any future development can be addressed through the legislative processes and local planning provisions.

Also, in accordance with cl.4 and 7, of this s.117 Direction, to enable examination of the consistency with this Direction, the Council must consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination and prior to exhibition.

*** 6.2 Reserving Land for Public Purposes**

The PP is seeking to reclassify council owned land currently classified as community. The proposal also seeks to rezone land at three sites currently zoned for open space. In accordance with cl.4 and the s.117 Direction, a PP must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the

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relevant public authority and the DG of Planning. Council has identified sites that are no longer required for road acquisition and are therefore surplus to requirement or no longer required for open space due to adequate open space supplies already being available. Other sites represent minor changes to correct boundary anomalies. The Director General can agree to these changes because they have been sufficiently justified.

It is noted the PP will require review by the Governor who will need to discharge from various land parcels their 'public reserve' status, trust and interests etc.

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **December 2013**

Comments in relation to Principal LEP :

It is expected the Lake Macquarie SI LEP (LM LEP 2013) will be finalised in late 2013.

Assessment Criteria

Need for planning proposal :

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

Council indicates the properties have been identified through routine administrative tasks as either administrative anomalies or been identified as no longer required or considered appropriate for their intended purpose. Council undertook investigations into each property to determine their appropriateness for reclassification and rezoning (where applicable).

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 PP is the best means of facilitating reclassification and rezoning of the subject sites, and achieving the intended outcomes for each property.

3. Is there a community benefit?

The proposal will result in the reclassification and possible sale of the following Council owned land:

*** 8c Main Road, Cardiff Heights & 58c Marshall Street, New Lambton Heights**
The sites were acquired for the purpose of constructing a road. The allotments are no longer required for future road works. The lots are zoned 2(1) Residential under LM LEP 2004 however there is no street frontage. Council considers the site has little development potential and is likely to be sold to the adjoining owner.

*** 17 Walker Street, Warners Bay**
The site is currently partly zoned 2(2) Residential (Urban Living) and part 7(2) Conservation (Secondary). The residential zoned portion is irregular in shape, and not considered to be of sufficient area to enable development in its own right. However, it is likely the site will be consolidated with the adjoining residential allotment to facilitate future development.

*** 256 Lake Road, Glendale**
On 21 November 1972, Council resolved to accept the gift of the land, on the understanding that it be used to construct aged care. The land was transferred to Council on 11 October 1974. Council has since undertaken further investigations into the

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development potential of the land for aged care purposes, but the land is deemed unsuitable due to the slope, bushfire issues, and inaccessibility to public transport, services and facilities etc. To enable Council to utilise the land for purposes other than for an aged care facility, Council needs to extinguish the implied trust through the reclassification process. Council indicates that all proceeds from the sale of the land will be set aside for aged care purposes and kept within a Restricted General Fund for this purpose. As the site is zoned 2(1) Residential, the land may be appropriate for a future small subdivision.

***88 Neilson Street, Edgeworth**

The land was dedicated as a public reserve, and is zoned 6(1) Open Space under LM LEP 2004. However, the site is currently fenced as part of the adjoining privately owned parcels and contains an easement for a transmission line. Council has been negotiating with the adjoining owner to enable residential subdivision. The land will be reclassified to operational land to facilitate its sale. The site will be rezoned from 6(1) Open Space to 2(1) Residential, consistent with surrounding zones to enable future development to proceed. The proposed minimum lot size and building heights reflect the adjoining land uses.

*** 11 Luprena Close, Charlestown**

The public reserve is providing the public an access way. However, it is presently encroached by neighbouring fencing and pool decking. The reclassification of land will enable the sale of the land to the adjoining neighbour to rectify the matter. Part of the lot will be rezoned from 6(1) Open Space to 2(2) Residential (Urban Living), consistent with surrounding zones. Council intends for the access way to remain available for public use on the retained portion of 6(1) land.

*** 320 Pacific Highway, Charlestown**

An unauthorised rotunda was constructed on the land and is used by the adjoining Apollo Hotel. Council has determined to rezone and reclassify the land to enable sale to the Apollo Hotel for their continued use and rectify the anomaly. Part of the lot will be rezoned from 6(1) Open Space to 6(2) Tourism and Recreation.

It is considered that the PP will result in a net community benefit.

Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)

There are no specific actions or outcomes relating to reclassification of Council land in the LHRS, and the sites are not specifically identified within the LHRS. However, the proposed land reclassification and rezoning outcomes are consistent with the objectives and outcomes of the LHRS.

Lifestyle 2030 Strategy (not endorsed)

There is no specific discussion relating to reclassification of land in the Lake Macquarie Lifestyle 2030 Strategy. The PP will rectify administrative anomalies or enable sale of land no longer required or considered appropriate for their intended purpose. No sites are identified in the Green System map as having significant environmental features. The proposed land reclassification and rezoning outcomes are consistent with the objectives and outcomes of the Lifestyle 2013 Strategy.

SEPPs & s.117 Ministerial Directions

Refer to previous sections for discussions.

Environmental social economic impacts :

The PP is considered to have negligible environmental impacts and will not adversely affect any species, habitats or communities.

The proposal will have positive social and economic impacts for Council through the sale of underutilised Council land, and rectification of existing encroachments to public land to allow public areas to be clearly and accurately defined. Council advises that proceeds from the sale of land will be used for future expenditure on public facilities and aged care focused purposes.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) :

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 :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning_Proposal_LM_LEP_2004_Amendment_86_Anexure_D_Council_Resolutions.pdf	Determination Document	Yes
Planning_Proposal_LM_LEP_2004_Amendment_86_Anexure_E_Supporting_information.pdf	Determination Document	Yes
Planning_proposal_LM_LEP_86_Reclassification_and_Rezoning.pdf	Determination Document	Yes
Lake_Macquarie_City_Council_Amendment_86_Reclassification_and_Rezoning_of_Council_Land_Various_Sites.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions:

- 2.2 Coastal Protection**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**

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4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.2 Reserving Land for Public Purposes

Additional Information :

It is recommended that the Planning Proposal proceed subject to the following conditions:

1. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:
(a) the Planning Proposal be made publicly available for a minimum 28 days.
(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 5.5.2 of A guide to preparing LEPs (Department of Planning & Infrastructure 2013)

2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- * NSW Rural Fire Service
- * Mine Subsidence Board

Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the Planning Proposal.

3. The Director General (or delegate) agree with the following section 117 Direction inconsistencies –

4.1 Acid Sulfate Soils; 6.2 Reserving Land for Public Purposes as the inconsistency with the terms of the s.117 Direction are of minor significance

Consultation is required with the Mine Subsidence Board and NSW Rural Fire Service to determine consistency with section 117 Directions – 4.2 Mine Subsidence and Unstable Land and 4.4 Planning for Bushfire Protection respectively. Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to submission if reclassifying land).

5. The timeframe for completing the LEP is to be 9 months following the Gateway Determination.

6. Council amend the PP prior to exhibition to clarify the amount of land that is to be reclassified at 11 Luprena Close and confirm the classification of the remainder of the lot.

Supporting Reasons :

* Lake Macquarie Council has identified the need for this administrative amendment to meet the operational needs of Council. Council has determined through its review process to reclassify and rezone land. Council indicates the properties have been identified through routine administrative tasks as either administrative anomalies or been identified as no longer required or considered appropriate for their intended purpose. Council undertook investigations into each property to determine their appropriateness for reclassification and rezoning (where applicable).

* Council has identified in the PP timeline a 6 month timeframe to complete the PP. A 9 month timeframe is recommended as this PP includes reclassification and a public hearing.

* As the PP includes reclassification of public land that will require the Governor to discharge 'public reserve' status, trusts, interests etc from the land, Council should not exercise their delegations under section 59(1) of the EP&A Act.

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Signature:



Printed Name:

KOFLAHERTY

Date:

1-11-2013