

Lake Macquarie LEP 2004 Amendment No. 80: 5 Birkwood Close, Charlestown

Proposal Title : **Lake Macquarie LEP 2004 Amendment No. 80: 5 Birkwood Close, Charlestown**

Proposal Summary : **This PP seeks to rezone 1.532 hectares of land from 6(1) Open Space to 2(1) Residential**

PP Number : **PP_2013_LAKEM_007_00** Dop File No : **13/09386-1**

Proposal Details

Date Planning : **31-May-2013** LGA covered : **Lake Macquarie**
 Proposal Received :
 Region : **Hunter** RPA : **Lake Macquarie City Council**
 State Electorate : **CHARLESTOWN** Section of the Act : **55 - Planning Proposal**
 LEP Type : **Spot Rezoning**

Location Details

Street : **5 Birkwood Close**
 Suburb : **Charlestown** City : **Lake Macquarie** Postcode : **2290**
 Land Parcel : **Lot 1943, DP 704476**

DoP Planning Officer Contact Details

Contact Name : **Ken Phelan**
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RPA Contact Details

Contact Name : **Leah Horsnell**
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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 : **N/A**
 Regional / Sub : **Lower Hunter Regional** Consistent with Strategy : **Yes**
 Regional Strategy : **Strategy**

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MDP Number :	Date of Release :	
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots : 15	No. of Dwellings (where relevant) :	15
Gross Floor Area : 0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **Site is very accessible, if appropriate site connections are provided, by active and public transport, less so by car. Close to daily shopping facilities and school. Therefore, locationally, very suitable for housing (for socially disadvantaged people)**

External Supporting Notes : **On 13 May 2013 Council's City Strategy Committee voted unanimously (12/0) to support the request for a Gateway Determination**

Adequacy Assessment**Statement of the objectives - s55(2)(a)**

Is a statement of the objectives provided? **Yes**

Comment : **Housing is prohibited within the existing 6(1) zone over the land.
Housing, Group Homes and Senior's Housing, as desired by Council, are all permissible with consent in the proposed 2(1) zone
Council indicate that the proposal intends to provide housing for the 'socially disadvantaged' however there is no mechanism to restrict any future housing for this purpose.**

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

Is an explanation of provisions provided? **Yes**

Comment : **As an amendment to the Lake Macquarie LEP, 2004:**

**Map- Rezone the site from 6(1) Open Space to 2(1) Residential.
(Refer to Map Sheet in Appendix 3).**

Dictionary- Amend the definition of the map by adding Lake Macquarie Local Environmental Plan 2004 (Amendment No 80)

The Planning Proposal would result in the following changes to Draft Lake Macquarie LEP 2012 (Council's Standard Instrument LEP):

- 1) Land Zoning Map- Land to be zoned 2(1) Residential would be zoned R2 Low Density Residential.(Refer to Map Sheet in Appendix 4).**
- 2) Lot Size Map- Minimum lot sizes would correspond to proposed zoning as follows: R2 –**

450m2

3) Height of Buildings Map- Maximum building heights would correspond to proposed zoning: R2 – 8.5m

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

2.1 Environment Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.1 Residential Zones

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

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

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

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 10—Retention of Low-Cost Rental Accommodation

SEPP No 19—Bushland in Urban Areas

SEPP No 21—Caravan Parks

SEPP No 55—Remediation of Land

SEPP No 60—Exempt and Complying Development

SEPP No 70—Affordable Housing (Revised Schemes)

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SEPP (Affordable Rental Housing) 2009

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

In regard to the SEPP 36- Manufactured Home Estates and S117 D 3.2 Caravan parks and Manufactured Home Estates, it is noted that the site currently provides for caravan parks and a manufactured home estate without rezoning the land; a form of affordable housing that would achieve the stated objectives of this planning proposal. Council should assess the proposal in light of SEPP 36- Manufactured Home Estates and S117D 3.2 Caravan parks and Manufactured Home Estates and include this in the public exhibition material.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Council indicate that although the land is zoned for open space it remains under private ownership and is not accessible to the public. Aerial photos, and the planning proposal itself, indicate that there are existing access paths to the site from the adjoining residential development and it can be assumed that the local residents access the land for recreation purposes. As such, despite the ownership, the proposal should be supported by evidence of the adequacy of open space in the broader area.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The following consultation regime is proposed in this proposal:**

- 28 day exhibition with notice of the PP to be given via newspaper advertisements in local newspapers (e.g. Post and The Newcastle Herald) and on the LMCC website's Public Notices and Exhibitions page;
- Display of the PP and studies, reports, plans and maps, and of the Gateway Determination, at Council Chambers, Charlestown Library and Speers Point Library for not less than 28 working days; and
- Letters mailed to landowners in the vicinity of the site describing the site and proposal, details of where and when the PP can be inspected, the name and address for a relevant contact at LMCC (i.e. to lodge submissions), and advising them of the last date for submissions.

This regime is supported by the Regional Planning Team.

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 : **December 2013**

Comments in relation to Principal LEP : **Lake Macquarie LEP 2013 was submitted in May 2013.**

Assessment Criteria

Need for planning proposal : **To develop the land for housing, a rezoning is required.**

Consistency with
strategic planning
framework :

The proposal is generally consistent or could be made so:

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP (Housing for Seniors or People with a Disability) 2004)

While the planning proposal emphasises the provision of housing for socially disadvantaged people, the proposed residential zoning, if approved, would permit housing for any household type.

SEPP (Affordable Rental Housing) 2009

This policy defines household characteristics that are eligible for affordable housing and limits the grounds on which a planning authority may refuse consent. The proposal may meet the requirements to be considered under this policy subject to detailed design of the houses.

At this stage the proposal is consistent with this policy.

SEPP 19 Bushland in Urban Areas

The aim of this policy is to protect urban bushland that has natural heritage, aesthetic, recreational, educational and scientific resource values.

Being within an extensive residential area and adjacent to schools, the land, and particularly the remnant stands of native trees and riparian corridor have potential for aesthetic, recreational and educational values. The existence of such values will be tested by the public exhibition of this planning proposal and subsequent development assessment. The proposal is not yet demonstrated to be consistent with this policy.

SEPP 55 Remediation of Land

This policy requires a planning authority to consider contamination before rezoning land for residential and certain other purposes. It is noted that the area of the playing field was filled with material of unknown provenance and quality. This requirement has not been met at this stage however the planning proposal identifies the need for a contamination study. Such a study is to comply with contaminated lands planning guidelines. This requirement is conditioned and consistency with this SEPP will be clarified prior to gazettal.

SEPP (Exempt and Complying Development Codes) 2008

This policy seeks to ensure consistency in those matters that either comply with planning codes or are exempt from planning control due to their minor nature.

This SEPP would have the effect of allowing a variety of house-types on the land if this application is approved as well as a range of minor installations, building works and alterations to and within the yards of houses on the land.

As this policy applies to the houses post-occupation it is not immediately relevant to the planning proposal.

SEPP (Infrastructure) 2007

This policy requires the developer to consult the council on any impact that the development may have on Council infrastructure assets such as drains, roads and footpaths and on services.

At this stage the proposal is consistent with this policy.

As the proposal is likely to give rise to a need for additional local infrastructure, it is appropriate that this policy be cited in the exhibited planning proposal.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

This policy permits certain exploration without consent and specifies operations permissible with consent eg. the working of mineral deposits. The proposal if developed

would limit coal seam gas (CSG) exploration and extraction on the land but so does the 'Draft Amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) (Coal Seam Gas Exclusion Zones) 2013'.

As the presence of housing would limit exploration activity, this policy should be cited for exhibition.

SEPP (Building Sustainability Index: BASIX)

This policy applies state-wide and puts in place a scheme to encourage sustainable residential development focusing on reducing domestic water and energy consumption via building design and appliance selection.

Consistency can only be determined at the building certification stage.

SECTION 117 DIRECTIONS

Section 117 Direction 2.1 Environment Protection Zones

This Direction applies to all relevant planning authorities and to all planning proposals. In this case Council has undertaken a broad biodiversity study which classifies the land as mainly cleared native vegetation, and indicates the intention to prepare a site-specific study as per S117D 2.1 (6)(b). Council is encouraged to investigate biodiversity values on the land prior to exhibition and consistency with this direction will be clarified prior to gazettal.

Section 117 Direction 2.3 Heritage Conservation

LMLEP 2004 Sch.4 does not list any items near the site within either the Charlestown or Gateshead suburbs, however this S117 Direction is also applicable to Aboriginal objects or places that may be found in developing this land adjacent to a creek and containing mature native trees that may bear traditional blazes or marks. A search for any local entries in the Department of Environment and Heritage's online Aboriginal Heritage Information Management System would narrow the risk of items or places being accidentally disturbed. The higher risk areas are the remnant eucalypt bushland in the north-eastern part of the land and the southern casuarina thicket within the creek riparian zone. Aboriginal heritage values will need to be assessed at the DA stage, perhaps requiring a site-specific study. Existing provisions within local and state legislation provide adequate protection for heritage items and therefore the proposal is consistent with this Direction.

Section 117 Direction 2.4 Recreation Vehicle Areas

This proposal does not enable use by recreational vehicles. The land is not within an environmental protection zone, notwithstanding the creek riparian zone, neither does it constitute part of a beach or dune nor adjoin same. The PP is consistent with this direction.

Section 117 Direction 3.1 Residential Zones

The proposal complies with this Direction in that, being infill, may make efficient use of existing infrastructure and services, helps minimise the impact of residential development on resource lands, and, encourages variety and choice in housing given the target residential market of socially disadvantaged people. The PP is consistent with this direction.

Section 117 Direction 3.2 Caravan parks and Manufactured Home Estates

This Direction applies to all relevant planning authorities and to all planning proposals. The requirement is to retain current provisions that permit caravan park development on the land.

Under the existing 6(1) Open Space Zone, caravan parks are a use permissible with consent, however under the proposed 2(1) Residential Zone they are prohibited. Further the site may meet the locational and accessibility requirements for a manufactured home estate. To be consistent with this Direction a site-specific provision would be required, by

adding Caravan Parks into the list of uses permissible with consent. However a site-specific provision is not supported by the Regional Team as this location has circuitous access to the Pacific Highway via a number of residential streets. Also, it is doubtful whether the usable area of this 1.5ha Lot would be a viable caravan park or be compatible with nearby established houses immediately to the east. However this inconsistency should be addressed by Council within the PP prior to public exhibition.

Section 117 Direction 3.3 Home Occupations

This Direction applies to all relevant planning authorities and to all planning proposals. Council confirms that this proposal will not change the permissibility of home occupations as permitted in residential zones under its principal LEP. The planning proposal is therefore consistent.

Section 117 Direction 3.4 Integrating Land Use and Transport

While this Direction applies to all relevant planning authorities, it only applies where an urban land zone is being created; residential in this case. The requirement, in the case of residential uses, is consistency with the planning principles of Improving Transport Choice-Guidelines for planning and development, DUAP, 2001.

While potential pedestrian links between the site and surrounding areas and facilities are shown schematically on the proposal concept plan, consistency with these guidelines is a matter to be clarified at the development application stage when relationships between site layout and surrounding transport networks can be more fully assessed.

The PP is considered sufficiently consistent with this direction at the rezoning stage, due to the nature of the development as infill.

Section 117 Direction 4.1 Acid Sulfate Soils

Council's Acid Sulphate Soils (ASS) Map does not indicate ASS on the land. It does not have a recent history of marine inundation. The proposal is consistent with this Direction.

Section 117 Direction 4.2 Mine Subsidence and Unstable Land

The land falls within the Lake Macquarie Mine Subsidence District. A referral to the Mines Subsidence Board is conditioned. With this referral to the Mines Subsidence Board, the proposal will be consistent with this Direction.

Section 117 Direction 4.3 Flood prone Land

The land is not covered by the Lake Macquarie flood study of June 2012 being above the 4m contour which constitutes the study area boundary. However the land may be subject to localised flooding of the creek. A requirement to prepare a local flood risk study may be made by Council at the development application stage. The proposal is considered sufficiently consistent with this Direction.

Section 117 Direction 4.4 Planning for Bushfire Protection

This direction applies to the land and requires Council to assess the bushfire risk of the proposal prior to public consultation towards protecting life, property and the environment from bushfire hazards. The Direction discourages incompatible land uses in bushfire prone areas. The land is classified on Lake Macquarie Bush Fire Map as Vegetation Category 2 in the core of the site, and Bush Fire Vegetation Buffer (100m and 30m) around the perimeter.

Council must consult the Rural Fire Service prior to exhibition under this Direction and if RFS comments are considered, the planning proposal will be considered consistent with this Direction. This requirement is conditioned.

Section 117 Direction 5.1 Implementing of Regional Strategies

The proposal is generally consistent with the provisions of the Lower Hunter Regional Strategy which promotes infill development.

Section 117 Direction 6.1 Approval and Referral Requirements

The proposal does not include any provisions that would require additional referrals/concurrence or identify designated development. The proposal is consistent with this Direction.

Section 117 Direction 6.2 Reserving Land for Public Purposes

Council should demonstrate that despite the loss of land the provision of public open space in the area is adequate to meet current and the forecast future recreational needs of the population.

Council has been requested to provide comment on this matter such that this existing reservation by zoning for public recreation could confidently be removed. No response had been received by close of Gateway agenda. It is recommended that the Director-General not agree to this rezoning until this information is available. The proposal is therefore currently inconsistent with this Direction. A condition is attached requiring Council's provision of recreational needs and open space land supply evidence, for Regional Team review, prior to public exhibition.

Section 117 Direction 6.3 Site Specific Provisions

The proponent states that this PP does not anticipate the requirement for any additional LEP provisions or standards that do not already exist within LMLEP 2004 or the Draft LMLEP 2012. The proposal is consistent with this Direction.

Environmental social
economic impacts :

Environmental Impacts:

Two small bushland remnants, one isolated, one in a riparian corridor, remain on the land which have not been investigated for their biodiversity values. The larger group are eucalypts, the smaller southern group are reportedly weed-infested casuarinas. Council acknowledges that to fully assess the environmental impact of the proposal, a biodiversity study of the land will be necessary. This would also confirm that there are no threatened or endangered species. Council is encouraged to undertake such a study.

The land is not a known floodway but may be subject to localised flooding from the nearby creek. Council acknowledges that a local flood study is required to assess this hazard. Council is encouraged to undertake such a study.

Social Impacts:

The stated development type, housing for socially disadvantaged people, would clearly have a positive social impact on such households and for the community in general if through better support and quality housing a greater degree of independent living can be achieved. The PP pursues several Lake Macquarie Community Strategic Plan objectives, including;

Orderly expansion of such under-utilised land for low cost or disabled housing purposes will assist to meet housing targets of the LGA and to minimise population decline.

Advocate for and develop opportunities that will ensure all residents have equal opportunity to participate in the economic and social life of the community.

It is noted however that the rezoning would enable a variety of house-types suitable for a wide range of household types and circumstances and so does not limit the development to socially disadvantaged households. Whether or not the incentives under SEPP (Housing for Seniors or People with a Disability 2004) or SEPP (Affordable Rental Housing) 2009 are to be pursued remains a matter for the developer's discretion.

Economic Impacts:

Additional households may be expected to spend a greater proportion of their disposable income in the local centres of Gateshead, Belmont and Charlestown. Such households may also patronise public transport if direct, good quality pedestrian links to the existing stops are provided from the site.

Infrastructure Impacts:

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The proponent assumes that the 15 dwellings proposed can be supplied from the existing utilities and transport networks. It is noted that some residential intensification has occurred nearby in recent times. Three cottages on 25-29 Schroder Avenue, some 50m from the subject land, were redeveloped into eight townhouses. House prices and lot sizes in nearby enclaves may offer further urban consolidation opportunities close to existing services. Therefore a strategic study of the capacities of utilities, services and facilities may be prudent to enable this to occur with infrastructure provision integrated and coordinated with urban intensification including appropriate contribution rates and contribution district boundaries. Future residents on the land may also patronise public transport if quality access links to the existing stops are provided from the site to enable active transport connections at trip-ends.

Provision of direct active transport links to public transport and to the local centre is encouraged, consistent with the Lower Hunter Regional Strategy transport policies (p.30) and recommendations of the Premiers Council on Active Living toward healthier communities: http://www.pcal.nsw.gov.au/local_government

Assessment Process

Proposal type :	Consistent	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	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 :

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 - 5 Birkwood Close, Charlestown.pdf	Proposal	No
Notification of Preperation of Draft Amendment to Lake Maquarie Local Environmental Plan - 5 Birkwood Close, Charlestown.doc	Proposal Covering Letter	No

Planning Team Recommendation

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

S.117 directions:

- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 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
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 6.3 Site Specific Provisions

Additional Information :

1. That Council amend the planning proposal prior to exhibition and re-submit it to the Regional Office for review prior to exhibition, to include comment in relation to;
 - The availability of open space within the area and its adequacy to provide for the needs of residents despite the loss of this site.
 - The consistency of the PP with s117 direction 3.2 Caravan Parks and Manufactured Home Estates and 36 Manufactured Home Estates.

2. That a contamination study be undertaken to the satisfaction of council prior to the rezoning being completed.

3. That Council consult with the MSB and NSW RFS prior to public exhibition.

4. That Council investigate the biodiversity value of vegetation on site and amend the boundary of the zone if necessary prior to finalising the PP.

5. That Council be given delegations for the completion of the LEP amendment.

Supporting Reasons : Proceed to facilitate the development of an infill opportunity following clarification that the land zoned for public recreation is surplus to needs for accessible neighbourhood open space.

Signature:



Printed Name:

K O'FLAHERTY

Date:

7-6-2013