

Draft Lake Macquarie LEP 2004 Amendment No.83: 1A First St., Boolaroo; Incitec-Pivot Site

Proposal Title : **Draft Lake Macquarie LEP 2004 Amendment No.83: 1A First St., Boolaroo; Incitec-Pivot Site**

Proposal Summary : **Rezone part Lot 1 DP 225720 from 4(1) Core Industry to 2(1) Residential (Low Density) in the Lake Macquarie LEP 2004 or if the Lake Macquarie Draft LEP 2013 has been finalised, rezone the site from SP1 Hazardous Waste Storage Facility to R2 Low Density Residential**

PP Number : **PP_2013_LAKEM_010_00** Dop File No : **13/11470**

Proposal Details

Date Planning Proposal Received :	04-Jul-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 :	Spot Rezoning		

Location Details

Street :	1A First Street		
Suburb :	Boolaroo	City :	Lake Macquarie
		Postcode :	2284
Land Parcel :	Part of Lot 1 DP 225720		

DoP Planning Officer Contact Details

Contact Name : **Ken Phelan**
 Contact Number : **0249042705**
 Contact Email : **ken.phelan@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Grant Alderson**
 Contact Number : **0249210368**
 Contact Email : **galderson@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

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MDP Number :		Date of Release :	
Area of Release (Ha) :	7.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	100	No. of Dwellings (where relevant) :	100
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 :	The land forms part of a broader former industrial site. Its history is: From 1890 Lead (Pb) was smelted on the adjoining Pasminco land. Between c.1895-2003 sulphide/ fertiliser was made on this site using lead smelter by-product. After plant closure, Incitec Pivot committed to prepare a voluntary remediation plan in 2005 for their site. An approval under Part 3A of the EP&A Act was granted with Incitec Pivot applying for the first stage of a four-phase, \$18.6M rehabilitation in 2007. Council resolved on 2 February 2009 to rezone part of the site and in 2010 the Lake Macquarie LEP Amendment No.21 was published, defining the industrial site subject to rehabilitation and requiring a Development Control Plan be made prior to any development approval on the land. LEP Amendment No. 57 of 16 December 2011 covered both the Pasminco and the Incitec-Pivot sites and rezoned part of Incitec's site from 4(1)Core Industry to 2(1) Low Density Residential but left the subject land as 4(1) Core Industry to store contaminated spoil and for which a mound was designed to take spoil scraped from across the Incitec site. Approval was given in 2013 to add 450,000 cubic metres of Incitec's contaminated waste to the approved 1.15M cu.m./20ha adjoining Pasminco containment mound/ cell rather than build a separate Incitec cell. Minister's approval of this Modified Remediation Plan in 2012 (Project Approval MP 08_2221 Mod 1) has enabled the subject land to be considered for a range of possible urban uses. As the site is flanked by residential zones on three sides, Council's selected land use is a 2(1) Low Density Residential zone.		
External Supporting Notes :	Council's Community Strategic Plan 'Lifestyle 2030' provides the long-term direction for the overall development of Lake Macquarie. The proposal is consistent with LS2030. The proposal is also located within a 'growth and expansion corridor' in Lifestyle 2030's urban structure map. The proposal also aligns with other strategic directions and outcomes. (source: Council statement in PP)		

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

Comment : The proposal seeks a low-density residential zone over the land. It is that part of the former Incitec Pivot fertiliser plant previously identified for a containment cell. Hazardous waste storage under an earlier approved remediation plan for the Incitec site is now to be

provided on adjoining Pasminco land where a similar containment cell is to be constructed and monitored, relieving this land of the previously planned use within its 4(1) Industrial (Core) zone. The site for the waste cell is now being proposed for a 2(1) Residential zone at low density.

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

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

Comment : **The Planning Proposal provides an explanation for how the proposal will amend the current Lake Macquarie LEP 2004 and the draft Lake Macquarie LEP 2013.**

The explanation of provisions could be strengthened with an explanation of what the effect is of amending Schedule 8 and 9 (under the Lake Macquarie LEP 2004) or amending clause 7.15 (under the draft Lake Macquarie 2013). A minor error in reference to clause 7.15 should be corrected prior to exhibition.

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

1.1 Business and Industrial Zones

1.3 Mining, Petroleum Production and Extractive Industries

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

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

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 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Infrastructure) 2007

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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

N/A

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

If No, explain :

Consistency with SEPP 55 can only be determined following further consideration and documentation of the proposal's compliance, given that the current contamination and remediation plans may not have contemplated residential use of this land. This information is to be updated in the planning proposal.

Consultation with relevant agencies is required before consistency with s117 directions can be confirmed. This matter is further addressed within the assessment section of this report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

• Regional Location Plan (colour)

- Aerial image with boundaries (colour)
- Existing Zoning Map under Lake Macquarie LEP 2004 (colour)
- Proposed Rezoning map (B&W)
- Proposal under Lake Macquarie Draft LEP 2012 (colour)

These maps well illustrate the subject land.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council initially requested 28 days however, due to the minor nature of the proposal, staff have subsequently agreed to 14 days in accordance with the consultation Guidelines for exhibiting low-impact planning proposals.**

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 : **Council has not indicated whether delegation is sought nor provided a project plan for the completion of the project. However due to the outstanding matters relating to SEPP 55 delegation's will not be issued in this case.**

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 : **The planned containment cell use for the site is not now required so alternative urban uses of the land can be considered. These in turn can contribute towards Regional Strategy outcomes.**

Previous employment-related rezonings across the broader site have provided land for up to 1,000 jobs.

Consistency with
strategic planning
framework :

SEPP Mining & Petroleum

Resource exploration and extraction are permissible under the current 4(1) Core Industrial zone but prohibited under the proposed 2(1) Low Density Residential Zone. The proposal is therefore inconsistent with the SEPP at this stage. Consultation with NSW Primary Industry is recommended by Council and this is supported.

SEPP Infrastructure

As the site is not within 90m of a classified road and the proposed lot yield is less than 200, RMS referral is not required under this SEPP.

The proposed residential use is likely to have a cumulative impact on travel demand along with other Incitec and Pasminco land redevelopment.

The proposal is consistent with this SEPP.

SEPP No 19—Bushland in Urban Areas

Historic clearance has left the site with no bushland.

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

This SEPP requires consideration of multi-dwelling housing where a redundant land use is being superseded. Zones B4 and 4(1) flank the north-western boundary of the land. The Council states that 27ha. of land across the wider Pasminco-Incitec site have been zoned for medium-density housing. This significantly increases housing choice in the suburb. The proposal is consistent with this SEPP.

SEPP No 44—Koala Habitat Protection

As noted under the urban bushland SEPP, the site is substantially cleared with no Koala habitat. Remaining trees will be lost in implementing the approved site remediation plan. The proposal is consistent with this SEPP.

SEPP No 55—Remediation of Land

The project plan of which this site forms part (Project Approval MP 08_2221 Mod 1) under Part 3A of the Environmental Planning and Assessment Act 1979, includes remediation of land and environmental auditing of the wider site. It is not clear however what assumptions the remediation plan and process were based on given the core industry zone over this site at that time and its allocation as the containment cell for the Incitec holding. Remediation plan documents do not specifically refer to this site, its condition or appropriate rehabilitation actions as it was not anticipated for residential use. Prior to exhibition Council is to investigate and document the proposal's compliance with SEPP 55, given that the current contamination and remediation plans may not have contemplated residential use of this land. This information is to be updated in the planning proposal.

SEPP No 71—Coastal Protection

There is no direct access to a foreshore and only minimal visibility from any foreshore. The proposal is considered to be consistent with this SEPP.

Section 117 Directions:

1.1 Business and Industrial Zones

The proposal is inconsistent with this Direction in that it seeks to rezone land from employment-generating uses.

Council states that the current 4(1) zone was used because it was the most suitable zone for a hazardous waste containment cell. The cell would not have generated long-term employment and hence the change of use to residential involves no identifiable loss of employment land. As such the inconsistency is considered justified as of minor significance under clause 5d.

1.3 Mining, Petroleum Production and Extractive Industries

The proposal is inconsistent with this Direction because the current 4(1) zone permits resource exploration and production whereas these are prohibited in the proposed low density residential zone. Council proposes to consult with Primary Industries and this is supported. Consistency or otherwise with this Direction will be determined following this referral.

2.2 Coastal Protection

Being separated from foreshore land and only marginally visible from foreshore, the site's development will not have an appreciable effect on the coastal zone.

The proposal is consistent with this Direction.

3.1 Residential Zones

Objectives of this Direction are to widen housing choice to meet needs, promote utilisation of existing infrastructure and services capacity and minimise the impacts of residential development on the environment and on resource lands.

The broader site redevelopment has 27% of land zoned for medium density residential use. This widens housing choice in the suburb.

The proposal is consistent with this Direction.

3.4 Integrating Land Use and Transport

Zoning as a containment cell would not generate traffic and hence was not accounted for in traffic studies. The proposed zone will facilitate about 100 houses and hence a population with access and travel needs.

The principles of 'Improving Transport Choice' (DUAP 2001) are taken up in Council's DCP for the broader redevelopment site (Pasminco Area Plan DCP No.1 Revision 9) and these principles are being progressively applied to areas as they are released. The proposal is therefore consistent with this Direction.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction insofar as an acid sulphate soils study has not been prepared.

However as the area of land at risk is 0.1ha of land with ASS risk Classification 5, and the standard ASS provisions of the LEP will apply to the site. This inconsistency is considered to be of a minor nature.

4.2 Mine Subsidence and Unstable Land

The land is located within the Lake Macquarie Mine Subsidence District. Consultation with the Mines Subsidence Board is therefore proposed by Council and this is supported.

Consistency with this Direction can be determined following consultation.

4.4 Planning for Bushfire Protection

The site does not involve any bushfire prone land so this Direction does not apply.

5.1 Implementation of Regional Strategies

The proposal is consistent with the Lower Hunter Regional Strategy and at this small scale is not inconsistent with regional strategy mapping.

Environmental social
economic impacts :

• Environmental Impacts

Extensive contamination on the site reflected its historic use in alkali/ fertiliser manufacture. Based on earlier studies, a plan is being implemented to remediate developable land. Environmental impacts and outcomes are therefore generally positive. A number of environmental studies were undertaken as part of Amendment No. 57 to Lake Macquarie LEP 2004. No further studies are proposed in the submission. The study areas cover the subject land, however the subject land was identified as the location of a proposed containment cell.

As the extent, degree and nature of contamination of the subject land is not shown in the proposal and, its inclusion in the remediation and environmental auditing certification program is unclear, further evidence is required demonstrating that the site can be remediated for housing.

(Previous studies are accessible via leptracking.planning.nsw.gov.au under the project

title 'Lake Macquarie LEP 2004 (Amendment No 57) - Pasminco Stage 2')

• **Social Impacts**

Council has stated that:

'The Planning Proposal is located in an area with affordable land prices. The Planning Proposal is anticipated to increase the supply of affordable housing in the area'.(City Strategy Committee Meeting - 11 June 2013 Page 3)

The site also offers good access to public transport being about 700m from Cockle Creek railway station and within ten minutes walk to regular bus services.

• **Economic Impacts**

As stated by Council, the proposal will not result in a loss of employment land as such, but it does entail the opportunity cost of not rezoning to another, more appropriate employment zone if possible. Sale of the land for development will realise income to the Incitec holding and possibly offset the cost of land decontamination and/ or the provision of more comprehensive facilities than possible if used as a containment cell.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2) (d) :	Office of Environment and Heritage NSW Department of Primary Industries - Minerals and Petroleum Mine Subsidence Board		

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 : **The relevance of the provision and funding of state infrastructure was assessed in 2009 and a determination made, that it was not relevant to the development of Pasminco and Incitec Pivot sites, was dated 21/10/09.**

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal - 1A First Street Boolaroo.pdf	Proposal	Yes

Letter to Department of Planning and Infrastructure seeking ga.pdf	Proposal Covering Letter	Yes
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Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 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**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**

Additional Information :

1) Prior to exhibition Council is to investigate and document the proposal's compliance with SEPP 55, including consult with the EPA. This is because the current contamination and remediation plans may not have contemplated residential use of this land. This information is to be updated in the planning proposal.

2) Council refer the proposal to the Director General , Primary Industries (Mining and Petroleum) to determine consistency with SEPP Mining and Petroleum and S117 Direction 1.3.

3) Council refer the proposal to the Mine Subsidence Board to determine consistency with S117 Direction 4.2.

4) The Director General's Delegate accept the inconsistency with Section 117 Direction 1.1 Business and Industrial zones and 4.1 Acid Sulfate Soils as being minor in nature for reasons outlined within this report.

5) The PP is to be completed within twelve months.

Supporting Reasons :

The subject land is no longer required for its zoned purpose due to a revised remediation plan for the larger site. As such the land may be used for an alternative purpose. Council has considered a range of zones including business, industrial and medium density residential however it has requested a low density residential zone. This is consistent with the zone on three sides of the site and, due to the extent of land for employment and higher density residential development within the larger area, this low density zone is supported.

Signature:



Printed Name:

KOFLAHERTY

Date:

9-8-13