

Planning Proposal
Draft Amendment No. 83 to Lake Macquarie Local
Environmental Plan 2004 – 1A First Street Boolaroo

Local Government Area	Lake Macquarie City Council
Name of LEP:	Draft Amendment No. 83 to Lake Macquarie Local Environmental Plan 2004
Subject Land	1A First Street Boolaroo
Land Owner	Incitec Pivot
Applicant	Environmental Planning Services on behalf of Ferrier Hodgson
Maps:	Appendix 1 – Locality map Appendix 2 – Aerial photograph Appendix 3 – Existing zoning under Lake Macquarie Local Environmental Plan 2004 Appendix 4 – Proposed zoning for Lake Macquarie Local Environmental Plan 2004 Appendix 5 – Proposed zoning under Draft Lake Macquarie Local Environmental Plan 2013
Additional Information	Appendix 6 - Summary of Amendments No. 21 and No. 57 to Lake Macquarie Local Environmental Plan 2004

Part 1 – Objectives or Intended Outcomes

The objective of the planning proposal is to allow the development of low-density residential housing on the subject land. The subject land is part of the former Incitec Pivot Fertiliser site: 1A First Street (Lot 1 DP 225720), Boolaroo. The subject land was the proposed location of a containment cell (hazardous waste storage facility) associated with the remediation of the Incitec site. The containment cell is no longer required and development of the subject land for residential housing is proposed.

Part 2 – Explanation of the Provisions

The planning proposal would result in the following changes to Lake Macquarie Local Environmental Plan (LMLEP) 2004:

Amendment Applies To	Explanation of the Provision
LMLEP 2004 - Maps	Change the land use zone for the subject land from 4(1) Industrial (Core) Zone to 2(1) Residential Zone. Refer to Appendix 4.
LMLEP 2004 - Schedule 8 Land subject to special development requirements	Amend Item 10 by adding the subject land to Column 1.
LMLEP 2004 - Schedule 9 Consent to development subject to special requirements	Amend Item 4 by adding the subject land to Column 1.
Dictionary	Amend the definition of <i>the map</i> by adding Lake Macquarie Local Environmental Plan 2004 (Amendment No 83)
Note: Item 10 in schedule 8 and item 4 in schedule 9 apply to the rest of the Incitec site and the adjacent former Pasminco Cockle Creek Smelter site. The items were inserted into the schedules when the Incitec and Pasminco sites were rezoned for residential, commercial, and mixed-use purposes as part of Amendment No. 21 and 57 to LMLEP 2004. The schedules did not apply to the subject land at the time, as the subject land was the proposed location of a containment cell. Given the subject land is now proposed to be rezoned for residential purposes, the subject land is recommended to be included in the Schedules.	

The planning proposal would result in the following change Draft Lake Macquarie Local Environmental Plan (LMLEP) 2013:

Amendment Applies To	Explanation of the Provision
Land Zoning Map - Sheet LZN_014	Change the land use zone for the subject land from SP1 Hazardous Waste Storage Facility - Containment Cell to R2 Low Density Residential. Refer to Appendix 5.
Lot Size Map - Sheet LSZ_014	Change the minimum lot size for the subject land to 450m ² .
Height of Buildings Map - Sheet HOB_014	Change the maximum building height for the subject land to 8.5m.
Draft LMLEP 2013 - 7.15 (2) Land at Boolaroo	Amend Clause 7.1.5(2) by adding the subject land.
Note: Minimum lot sizes and maximum building height controls do not previously apply to the subject land under Draft LMLEP 2013 as the land was proposed to be used for a containment cell. The proposed minimum lot sizes and maximum building height controls are consistent with R2 Residential zoned land in Lake Macquarie. Note: Clause 7.15(2) is a conversion of item 10 in schedule 8 and item 4 in schedule 8 in LMLEP 2004.	

Part 3 – Justification for the Provisions

A. Need for the planning proposal

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

No. The planning proposal is a response to changes to the remediation plan for the former Incitec Pivot Fertiliser site.

From the years 1913 to 2009, a fertiliser factory operated on the Incitec site. The site was significantly contaminated as a result of this industrial activity. In 2010, the Minister for Planning and Infrastructure approved a remediation plan (Project Approval MP 08_2221) under Part 3A of the *Environmental Planning and Assessment Act 1979* to clean up the contamination and enable redevelopment of the Incitec site. Remediation was to involve excavating all the contaminated material and placing it into an onsite 'containment cell'. The containment cell would store the contaminated material permanently and prevent contact with the external environment.

In 2011, Amendment No. 57 to LMLEP 2004 rezoned part of the Incitec site from 4(1) Industrial (Core) zone to 2(1) Residential zone and 2(2) Residential (Urban Living) zone. However, the subject land retained a 4(1) Industrial (Core) zone to accommodate the construction of the proposed containment cell.

In 2012, the Minister modified the remediation plan (Project Approval MP 08_2221 Mod 1). The modification eliminated the requirement for a containment cell on the Incitec site. The modification permitted placing all the excavated contaminated material from the Incitec site into a containment cell on the adjacent Pasminco Cockle Creek Smelter site.

Following modification of the remediation plan, the subject land no longer requires the retention of an industrial zoning. The most appropriate land use zone for the subject land is low-density housing, which is consistent with the rest of the Incitec site. The development potential of the subject land is approximately 100 detached residential dwellings based on a density of 12 dwellings per hectare.

Medium density housing or employment uses are not proposed. Amendments No. 21 and No. 57 to LMLEP 2004 previously rezoned a sufficient amount of land in the surrounding area for these uses (refer to Appendix 6 for further details).

Supporting Studies

Comprehensive studies were undertaken for the Incitec site as part of Amendment No. 57 to LMLEP 2004 (refer to Appendix 6 for further details). The studies did not identify any significant constraints to the development of the subject land. The studies included a traffic study undertaken by the former Roads and Traffic Authority. The traffic study recommended that the Pasminco and Incitec sites connect to the regional road network via a single access point onto TC Frith Avenue. The traffic study identified that the connection would have minor impacts on the regional road network. The subject land is part of the Incitec site, and will utilise the access point to connect to the regional road network.

No additional studies are necessary to support the planning proposal.

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

Residential housing is the most appropriate use of the subject land. The zone applying to the subject land permits heavy industrial uses, and does not permit residential housing. Changing the land use zone is the only way to allow residential housing on the subject land.

B. Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Lower Hunter Regional Strategy (LHRS) was prepared to guide the long-term development of the Lower Hunter. A key focus of the LHRS is to ensure there is a sufficient supply of land for jobs and housing. The LHRS identifies the subject land as employment land, located adjacent to the emerging Glendale regional centre. The proposal is **consistent** with the LHRS for the following reasons:

- The proposal will not result in the loss of any land required for employment generating uses. The subject land was the proposed site of a containment cell associated with the remediation of the Incitec site. Additional land is not required for employment uses in the surrounding area. Amendments No. 21 and No. 57 to LMLEP 2004 previously zoned an adequate amount of land for employment uses in the surrounding area (refer to Appendix 6 for further details).
- The proposal will increase the supply of land for low-density housing. The proposal will enable additional infill housing in an established residential area with adequate services and infrastructure, and in close proximity to the emerging Glendale regional centre. Additional land is not required for medium density housing in the surrounding area. Amendments No. 21 and No. 57 to LMLEP 2004 previously zoned an adequate amount of land for medium density housing in the surrounding area (refer to Appendix 6 for further details).

4. Is the planning proposal consistent with the local council's Community Strategic plan, or other local 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 the following strategic directions and outcomes:

Strategic Direction 3 - A well designed, adaptable and liveable city

Outcome 3.3 - More extensive infill redevelopment surrounds the LGA's town centres, such as Charlestown and Cardiff; and incorporates medium density housing to achieve a 30% medium density housing (not including duplexes) target by 2030.

Comment: The proposal will provide low density infill residential redevelopment within 2km of the emerging Glendale regional centre.

Medium density residential development is not proposed. Land zoned for

medium density residential development is provided on the adjacent Pasminco site.

Strategic Direction 4 - A well serviced and equitable city

Outcome 4.5 - No urban area is more than 10 minutes walk from a regular public transport route. The outcome will be achieved through the coordinated activities of Council, Transport NSW, Hunter Buses and City Rail.

Comment: The proposal is located 500m (5-6 minute walk) from regular bus services along Main Road, and 700m (8-9 minute walk) from regular train services at Cockle Creek Train station.

Strategic Direction 6 - A City responsive to the wellbeing of its residents

Outcome 6.6 - There is an increased supply of affordable housing.

Comment: The proposal is located in an area with affordable land prices. The proposal is anticipated to increase the supply of affordable housing in the area.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal is generally consistent with the relevant SEPP, with the exception of SEPP (Mining, Petroleum Production and Extractive Industries) 2007 which requires further investigation.

SEPP	Objective	Findings
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	The aim of this policy is to provide for the proper management and development of mineral, petroleum and extractive material resources.	The proposal has implications for the operation of this policy on the subject land. Under this policy, mining, petroleum production and extractive industries are permitted with consent on industrial land. The proposal will rezone the subject land from industrial to residential uses, thus prohibiting mining, petroleum production and extractive industries on the subject land under the policy. <u>Additional Actions</u> Consultation will be undertaken with the Director-General of the Department of Primary Industries as a requirement of S117 Direction 1.3 - Mining, Petroleum Production and Extractive Industries.
SEPP (Infrastructure) 2007	The aim of this policy is to facilitate the effective delivery of infrastructure across the State. The	The proposal has limited implications for the operation of this policy. The policy may apply to some of the infrastructure

SEPP	Objective	Findings
	policy permits a range of infrastructure development to occur as exempt or complying development.	development required to be constructed as part of the proposal. The proposal is not categorised as 'traffic generating development to be referred to the RTA' under Schedule 3 of the SEPP. The proposal is not located within 90m of a classified road. The proposal will produce less than 200 allotments.
SEPP No 19 – Bushland in Urban Areas	This policy requires that a draft LEP must give priority to retaining native bushland.	The proposal is consistent with this policy. The majority of native bushland was removed from the Incitec land to construct the infrastructure required for the fertiliser manufacturing business. Little or no native bushland will remain after the approved remediation works are completed.
SEPP 32 – Urban Consolidation	The aims and objectives of this policy are to promote redevelopment of urban land no longer required for its original use. The policy requires that a draft LEP must give consideration to redeveloping vacant urban land for multi-dwelling housing.	The proposal is consistent with the aims and objectives of the policy. The subject land is no longer required for its original intended use. The proposal will allow redevelopment of the subject land for low-density residential housing. Medium density housing is not proposed. Amendments No. 21 and No. 57 to LMLEP 2004 previously zoned an adequate amount of land for medium density housing in the surrounding area (Refer to Appendix 6 for further details).
SEPP No 44 – Koala Habitat Protection	This policy encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	The proposal is consistent with this policy. The majority of native bushland was removed from the Incitec land to construct the infrastructure required for the fertiliser manufacturing business. Little or no native bushland will remain after the approved remediation works are completed.
SEPP 55- Remediation of Land	The objective of this policy is to promote the remediation of contaminated land. The policy requires land contamination and remediation to be considered at	The proposal is consistent with the policy objective. The Minister for Planning and Infrastructure approved a remediation plan (Project Approval MP 08_2221 Mod 1) under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> to clean up

SEPP	Objective	Findings
	the rezoning and development assessment stages. The policy applies as the subject land is a declared 'remediation site' under the Contaminated Land Management Act 1997 and is proposed to be rezoned for residential purposes.	the contamination. Under the approval, remediation involves excavation of contaminated soil and materials and its placement into a containment cell located on the adjacent Pasminco site. A Site Auditor must also certify that the subject land has been remediated to residential standards. DoPI and OEH must also approve the Site Auditor's certification prior to the subject land being sold or released for developed. The proposal also includes provisions in Item 4, Schedule 9 of LMLEP 2004 that ensures "<i>There must be no significant land use conflicts between the proposed development and the ongoing remediation of the remainder of the site</i>".
SEPP 71 – Coastal Protection	The aim of this policy is to ensure that development in the coastal zone is appropriate, suitably located, and that there is a consistent and strategic approach to coastal planning and management. The policy applies to the subject land as it is located within the Coastal Zone (as defined on the Coastal Zone Maps for Lake Macquarie).	The proposal is consistent with the policy. The proposal will not have an adverse impact on the coastal zone or coastal management strategies. The subject land does not have direct access to the foreshore and is not likely to be visible from the foreshore. The proposal will not affect coastal management strategies.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The planning proposal is consistent with the following relevant Ministerial Directions, except Directions 1.1 and 4.1. Justifications for the inconsistencies are provided below, and concurrence from the Director General will need to be granted for the inconsistencies. Under Directions 1.3 and 4.2, consultation is also required with the Mine Subsidence Board and the Director-General of the Department of Primary Industries.

Ministerial Direction	Objective	Findings
1.1 Business and Industrial Zones	The objectives of this direction include encouraging employment growth in suitable locations, and protecting employment land in business and industrial zones. The direction applies as the proposal intends to rezone the site from an industrial zone to a residential zone.	The proposal is considered to be inconsistent with the direction as it does not retain the existing industrial zone, or propose to replace it with an employment generating land use. <u>Justification for Inconsistency</u> The inconsistency is of minor significance, as the proposal will not result in the loss of employment generating land. The subject land was the proposed location of a containment cell associated with the remediation of the Incitec site. The subject land was not intended for employment generating purposes. Amendments No. 21 and No. 57 to LMLEP 2004 previously zoned an adequate amount of land for employment uses in the surrounding area (refer to Appendix 6 for further details). <u>Additional Actions</u> The Director – General will be required to endorse the proposal's inconsistency with this direction.
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that mining, petroleum and extractive industries are not compromised by inappropriate development.	The direction applies as the proposal will prohibit mines and extractive industries on the subject land. Under this direction, consultation is required with the Director-General of the Department of Primary Industries. <u>Additional Actions</u> The proposal requires referral to the Director-General of the Department of Primary Industries. An objection from the Department is not anticipated. The Department did not object to Amendment 57 to LMLEP 2004, which rezoned part of the Incitec site for residential uses in 2011.
2.2 Coastal Protection	The objective of this direction is to implement the principles in the NSW Coastal Policy. The	The proposal is considered to be consistent with the direction. The proposal will not alter any provisions relating to the coastal zone currently

Ministerial Direction	Objective	Findings
	direction applies as the subject land is located within the Coastal Zone (as defined on the Coastal Zone Maps for Lake Macquarie).	in LMLEP 2004. The site does not have direct access to the foreshore and is only marginally visible from the foreshore. The proposal will not affect the coastal zone or coastal management strategies.
3.1 Residential Zones	The objectives of this direction are to encourage housing diversity and ensure adequate utilisation and access to infrastructure. The direction applies because the proposal intends to zone land for residential purposes.	The proposal is considered to be consistent with the direction. The proposal will provide an opportunity to cater for population growth in a well serviced area, which is also close to the emerging Glendale regional centre.
3.4 Integrating Land Use and Transport	The objectives of this direction are to promote integrated land use and transport outcomes. The direction applies as the proposal intends to alter an urban zone.	The proposal is considered to be consistent with the direction. The subject land is located in close proximity to other centres such as Boolaroo and the emerging Glendale regional centre. The subject land is also located in close proximity to the Cockle Creek train station and bus services located along Main Road.
4.1 Acid Sulphate Soils	The objective of this direction is to avoid adverse environmental impacts associated with acid sulfate soils. The direction applies as the subject land includes 0.1 ha of land that has the potential for class 5 acid sulphate soil.	The proposal is considered to be inconsistent with the direction, as an acid sulfate soils study has not been prepared. <u>Justification for inconsistency</u> The inconsistency is of minor significance. Only a very small area (0.1ha) of the subject land has the potential for class 5 acid sulphate soil. Existing provisions within LMLEP 2004 will ensure any necessary acid sulphate soil investigations are undertaken prior to development consent being granted for housing. <u>Additional Actions</u> The Director – General will be required to concur that the proposal's inconsistency with this direction is of minor significance.
4.2 Mine Subsidence and	The objective of this direction is to prevent adverse impacts	The direction applies because the subject land is located within the Lake Macquarie Mine Subsidence

Ministerial Direction	Objective	Findings
Unstable Land	associated with mine subsidence.	District. Under this direction, consultation is required with the Mine Subsidence Board. <u>Additional Actions</u> The proposal requires referral to the Mine Subsidence Board. The Mine Subsidence Board is unlikely to object to the proposal. The Board did not object to Amendment 57 to LMLEP 2004, which rezoned part of the Incitec site for residential uses in 2011.
4.4 Planning for Bushfire Protection	The objective of this direction is to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas.	The direction is not applicable as the subject land does not include any bush fire prone land or buffers (Bush Fire Vegetation Category 1 or 2, or Bushfire Vegetation Buffers) under the Lake Macquarie City Council Bushed Fire Prone Land map.
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies. The direction applies as the subject land is identified in the Lower Hunter Regional Strategy (LHRS).	The proposal is consistent with the LHRS, and therefore consistent with this direction.

C. Environmental social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

There will be no potential for loss of critical habitat or threatened species, populations or ecological communities, or their habitats as a result of the planning proposal.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No environmental effects are anticipated as a result of the planning proposal.

The subject land is contaminated and remediation will occur in accordance with a remediation plan approved by the Minister for Planning and Infrastructure. The planning proposal will enable redevelopment of the land for residential purposes once the remediation is complete.

9. How has the planning proposal adequately addressed any social and economic effects?

No significant social or economic impacts are anticipated to result from the planning proposal.

The planning proposal will not result in any loss of employment generating land. The subject land was identified as the location of a containment cell and was not identified for employment uses.

The planning proposal will rezone the subject land for residential housing, a use that is consistent with the rest of the Incitec site and surrounding land. No adverse social effects are anticipated.

D. State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not require changes to the delivery of public infrastructure to the area.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with State and Commonwealth public authorities will be determined as part of the Gateway determination. Council recommends consultation with the following authorities:

- Department of Primary Industries; and
- Mine Subsidence Board.

Part 4 – Details of Community Consultation

Public Exhibition: Community Consultation will be determined as part of the Gateway determination. Council recommends a public exhibition period of 28 days.

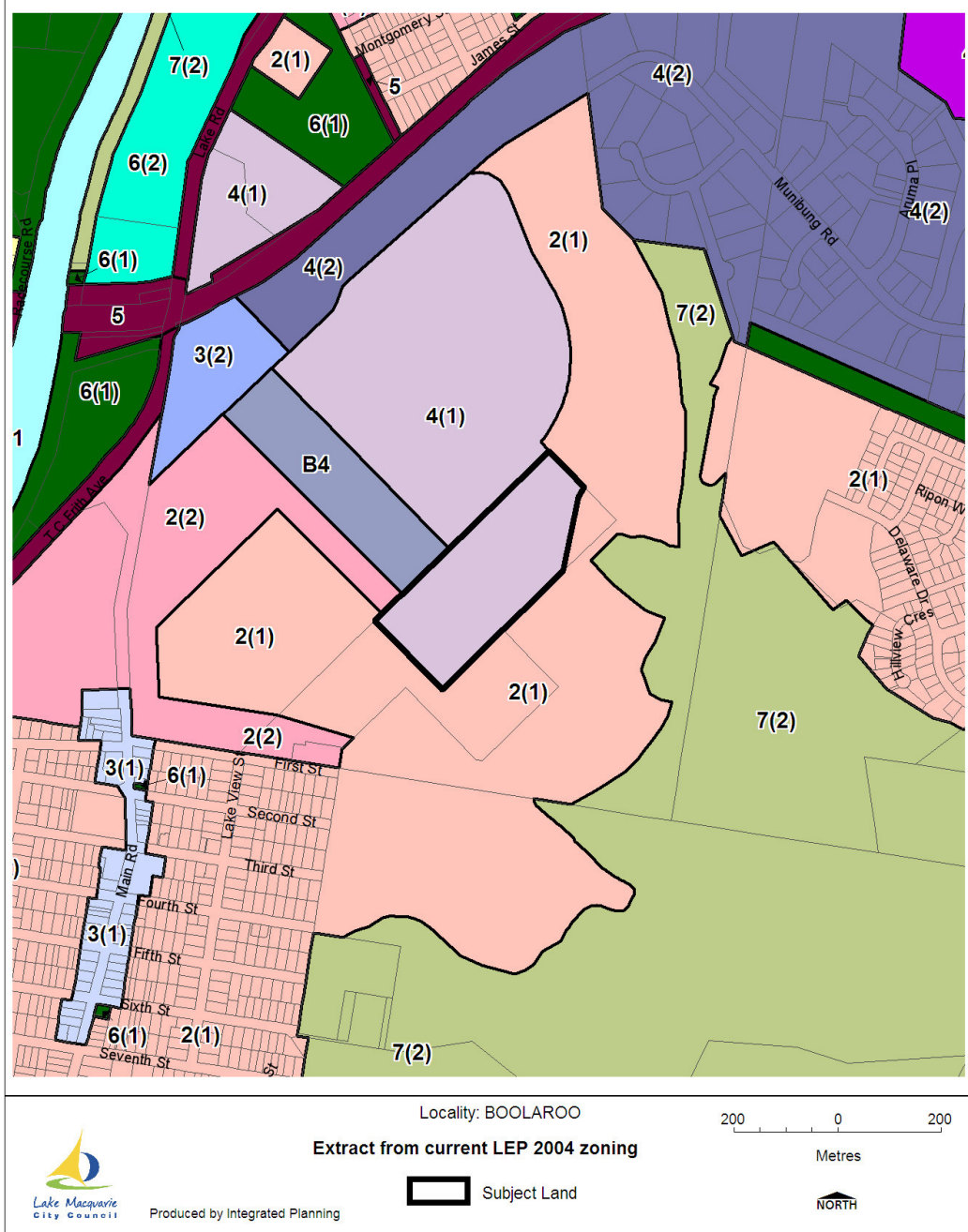
Appendix 1 – Locality Map



Appendix 2 – Aerial photograph



Appendix 3 – Existing zoning under Lake Macquarie Local Environmental Plan 2004



2
DP1127713

1
DP225720

2(1)

1
DP225720

2
DP1127713

1
DP225720

1
DP523781

First St

Second St

Lake View St

100 0 100

Metres

Scale 1:5,000

2(1) Zone 2 (1) Residential Zone

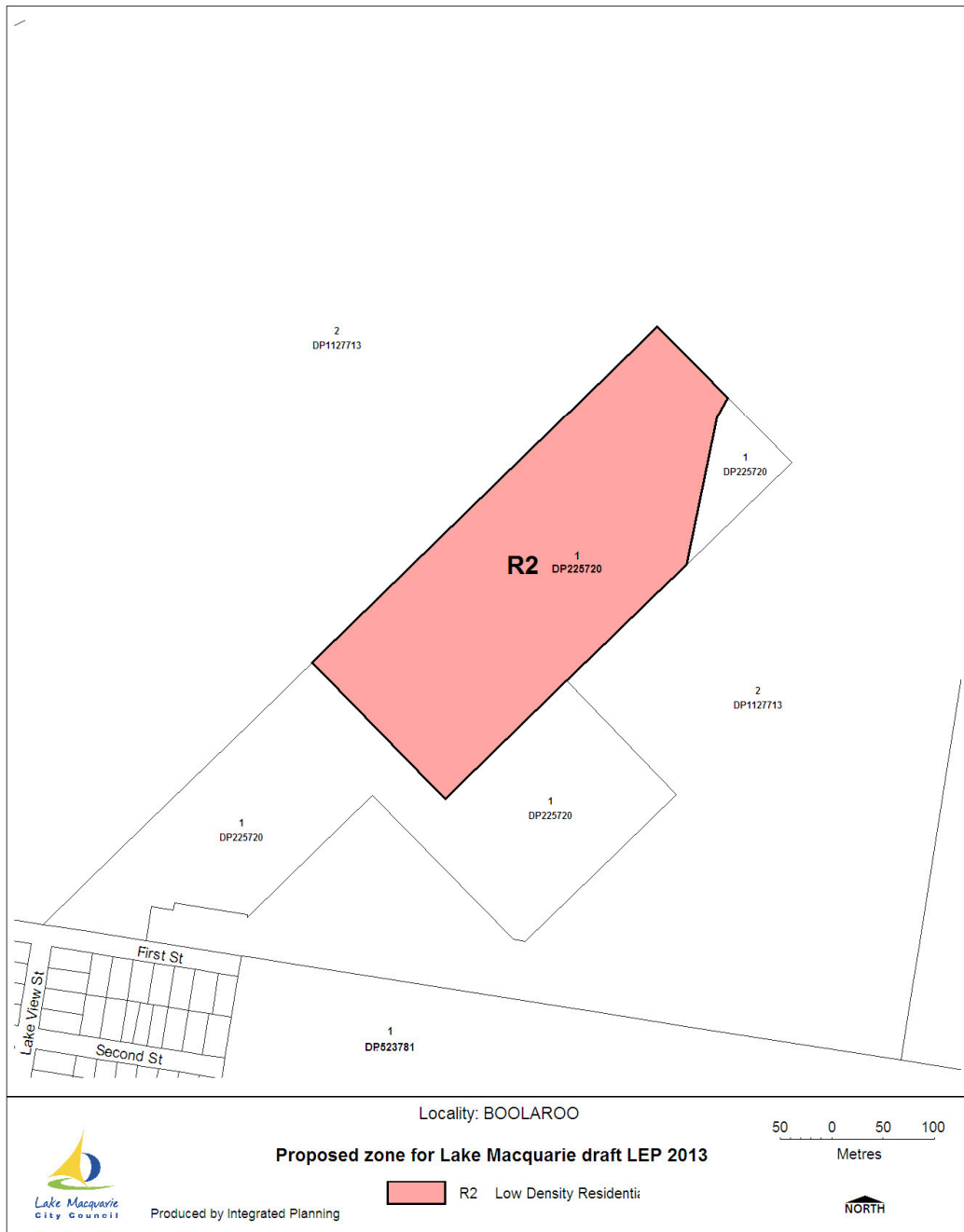
LOCALITY BOOLAROO

ENVIRONMENTAL PLANNING & ASSESSMENT ACT , 1979
CITY OF LAKE MACQUARIE
LAKE MACQUARIE LOCAL ENVIRONMENTAL
PLAN 2004 (DRAFT AMENDMENT NO 83)

SHEET 1 of 1

DRAWN BY GH	DATE 09/05/2013	STATEMENT OF RELATIONSHIP WITH OTHER PLANS <i>AMENDS THE LAKE MACQUARIE LOCAL ENVIRONMENTAL PLAN 2004</i>
PLANNING OFFICER GA		
FILE NO. COUNCIL	DEPT. of PLANNING	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS. GENERAL MANAGER
CERTIFICATE ISSUED UNDER SEC. 65 EPA ACT	DATE	DATE
		PUBLISHED ON NSW LEGISLATION WEBSITE ON

Appendix 5 – Proposed zoning under Draft Lake Macquarie Local Environmental Plan 2013



Appendix 6 - Summary of Amendments No. 21 and No. 57 to Lake Macquarie Local Environmental Plan 2004

Amendment No. 21 and 57 to LMLEP 2004

The former Incitec Pivot Fertiliser and Pasminco Cockle Creek Smelter sites were rezoned in two stages to permit redevelopment of the land:

- Stage 1: Amendment 21 to LMLEP 2004 (published 2010) rezoned part of the Pasminco site to permit a range of commercial and residential uses.
- Stage 2: Amendment 57 to LMLEP 2004 (published 2011) rezoned the Incitec site and the remaining part of the Pasminco site to permit a range of commercial, mixed use and residential uses. The existing 4(1) Industrial (Core) zone remained applicable to land proposed to be used for the two containment cells.

Amendments No. 21 and 57 to LMLEP zoned sufficient employment land to support approximately 1000 jobs. The rezoning adequately compensated for the loss of 325 jobs that resulted from the closure of the previous heavy industries on the site (Pasminco and Incitec).

Amendments No. 21 and 57 to LMLEP zoned 23 ha of land for medium-density housing adjacent to the Cockle Creek Train Station and 62 ha for low-density housing in other areas. As a result, 27% of the Pasminco and Incitec site is zoned for medium-density housing.

Past studies undertaken as part of Amendment No. 57 to LMLEP 2004

The following studies were undertaken as part of the Local Environmental Study (LES) prepared for Amendment 57 to LMLEP 2004:

- Draft Heritage Interpretation Plan prepared by Graham Brooks & Associates;
- Urban Capability Assessments by Coffey Geotechnics Pty Ltd;
- Visual Impact Report by Conybeare Morrison & Partners;
- Cell Visual Impact Report by Conybeare Morrison & Partners;
- Flora and Fauna Report by Umwelt;
- Bushfire Protection Assessment for the Proposed Rezoning of Land within the Pasminco;
- Cockle Creek and Incitec Pivot Site by Australian Bushfire Protection Planners Pty Limited;
- Archaeology Review by Umwelt;
- Incitec Fertilizers Limited Heritage Assessment October 2008 by ERM;
- Site Trunk Services Strategy by Acor Consultants Pty Ltd;
- Stormwater Management and Water Quality Concept Report by Acor Consultants Pty Ltd;
- Acoustic Report by Vipac;
- Rail Vibration Report by Vipac;
- Assessment of Future Housing Community Facilities and Open Space Needs by BBC Consulting Planners;
- Employment Land Use Assessment by SGS Economics and Planning;
- Traffic Report prepared by Traffix;
- Indicative Residential Layout in Relation to Site Constraints; and
- Visual Impact Assessment by Site Image.

The studies include the subject land, however, identify the subject land as the location of a proposed containment cell. The studies are accessible via leptracking.planning.nsw.gov.au under the project title 'Lake Macquarie LEP 2004 (Amendment No 57) - Pasminco Stage 2'.

The Roads and Traffic Authority of NSW also undertook a separate report titled: Traffic Study Pasminco Site Redevelopment.