

Lake Macquarie LEP 2004 (Amendment 85) - Zone Amendments & Permissibility of Childcare Centres

Proposal Title :	Lake Macquarie LEP 2004 (Amendment 85) - Zone Amendments & Permissibility of Childcare Centres		
Proposal Summary :	The planning proposal seeks to make minor zone amendments in the suburbs of Speers Point, Whitebridge and Coal Point. The acquisition layer will be removed from the site at Coal Point. The proposal also seeks to amend the zones in which childcare centres are permissible.		
PP Number :	PP_2013_LAKEM_016_00	Dop File No :	13/19782

Proposal Details

Date Planning Proposal Received :	02-Dec-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 :	Housekeeping		

Location Details

Street :	41 Thompson Road		
Suburb :		City :	Speers Point
		Postcode :	2283
Land Parcel :	Lot 21 DP 771139 Rezone from 7(2) Conservation (Secondary) to 2(1) Residential		
Street :	Part of 43 Thompson Road		
Suburb :		City :	Speers Point
		Postcode :	2283
Land Parcel :	Part of Lot 1 DP 335312 Rezone from 7(2) Conservation (Secondary) to 2(1) Residential		
Street :	Part of 16A Lonus Avenue		
Suburb :		City :	Whitebridge
		Postcode :	2290
Land Parcel :	Part of Lot 482 DP 555741 Rezone from 2(1) Residential to 7(2) Conservation (Secondary)		
Street :	Part of 24A Lonus Avenue		
Suburb :		City :	Whitebridge
		Postcode :	2290
Land Parcel :	Part of Lot 2 DP 569371 Rezone from 2(1) Residential to 7(2) Conservation (Secondary)		
Street :	13 Whitelocke Street		
Suburb :		City :	Coal Point
		Postcode :	2283
Land Parcel :	Lot 8 DP 24645 Rezone from 7(2) Conservation (Secondary) to 2(1) Residential		

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DoP Planning Officer Contact Details

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RPA Contact Details

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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 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) :	N/A
No. of Lots :	5	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 Ordinary Meeting on 25 November 2013 to support the preparation and lodgment of this Planning Proposal.

Council submitted this Planning Proposal to the Department of Planning and Infrastructure in early December requesting a Gateway Determination to enable amendments to Lake Macquarie LEP 2004 (or the pending draft Lake Macquarie LEP 2013) pursuant to section 56 of the EP&A Act 1979.

Council has requested the use of delegations in respect of the Minister for Planning and Infrastructure's plan making function under section 59 of the EP&A Act for this planning

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proposal.

External Supporting
Notes :

The PP includes the rezoning of land owned by Roads and Maritime Services who have concerns with the rezoning. This land and other land owned by RMS in the immediate area has been the subject of contention. The PP has therefore been submitted to the Panel for their consideration due to it being potentially contentious.

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 correct minor zone amendments, remove a site from Council's identified land acquisitions, and amend the zones in which childcare centres are permissible. 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 the Land Zoning Maps, and removal of 13 Whitelocke Street, Coal Point from Council's land acquisition layer. Also, amend the Land Use Table to enable 'childcare centres' as permissible only with development consent in the 6(2) Tourism and Recreation Zone, and delete 'childcare centres' as permissible only with development consent in the 4(1) Industrial Core Zone to prohibit the use.

If completion of the 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 the respective Land Zoning Maps, Lot Size Maps, Height of Building Maps, and Land Reservation Acquisition Map of LM LEP 2013. Also, the PP will add 'childcare centres' as permitted with consent in the RE2 Private Recreation Zone, and prohibit 'childcare centres' in the IN1 General Industrial Zone.

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

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 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 44—Koala Habitat Protection
- SEPP No 55—Remediation of Land
- SEPP No 71—Coastal Protection

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

Requirements relating to s117 Directions and SEPPs are discussed under the Assessment Tab of this report.

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

If No, explain :

Inconsistencies are considered within the Assessment Tab of this report. Additional information is required in relation to SEPP 55. Consultation with relevant agencies is also required before consistency or otherwise can be determined for s117 Directions - 4.2 Mine Subsidence and Unstable Land, 3.1 Residential Zones, and 4.4 Planning for Bushfire Protection.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Council has identified a site in Coal Point that will be removed from Council's Land Reservation Acquisition map under draft LM LEP 2013. A map reflecting this amendment needs to be included in the PP for exhibition purposes.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council intends to exhibit the proposal consistent with the Gateway requirements and to consult with various State agencies to ensure consistency with s117 Directions and SEPPs.

A 14 day public exhibition period is recommended because of the relatively minor nature of the PP.

Council has initially consulted with Roads and Maritime Services (RMS) over the rezoning of land at Lonus Avenue, Whitebridge (as owners of the land). RMS have raised concerns with the proposed environmental zoning. Further consultation between Council and RMS is required to resolve this matter.

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 : **March 2014**

Comments in
relation to Principal
LEP :

It is expected the Lake Macquarie SI LEP (LM LEP 2013) will be finalised in early 2014.

Assessment Criteria

Need for planning
proposal :

1. Is the Planning Proposal a result of any strategic study or report?

The PP is not the result of a strategic study or report.

Council proposes to make minor zone amendments by rezoning the following properties to reflect the current use of the land:

*** Rezoning 41 and Part of 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal**

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Point, from 7(2) Conservation (Secondary) to 2(1) Residential zone to reflect that these properties lie within established residential areas and currently contain residential dwellings. The Coal Point site will be removed from Council's identified land acquisitions.
* Rezoning part of 16A and part of 24A Lonus Avenue, Whitebridge from 2(1) Residential to 7(2) Conservation (Secondary) to reflect that this land has ecological constraints and limited development potential.

Council wishes to amend the permissibility of childcare centres within the LGA:

* The PP will add 'childcare centres' as permissible development within the 6(2) Tourism and Recreation Zone in the LM LEP 2004, and RE2 Private Recreation Zone in draft LM LEP 2013 to broaden the zones in which childcare centres can be located with minimal land use conflict.

The PP will remove 'childcare centres' as permissible from the 4(1) Industrial Core zone in LM LEP 2004, and the IN1 General Industries zone in draft LM LEP 2013 to prohibit the use and prevent potential land use conflicts and ensure the retention of industrial land for industrial uses.

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 the objectives and intended outcomes.

3. Is there community benefit?

The proposed zone changes are minor in nature, and the residential rezonings in Speers Point and Coal Point reflect the current use of the land. Council suggests that rezoning the Lonus Avenue, Whitebridge sites will contribute to ecological outcomes. Council indicates the proposed changes to the Land Use Table regarding permissibility of childcare centres better reflects the future uses in these zones.

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

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Consistency with
strategic planning
framework :

State Environmental Planning Policies (SEPP)

* **SEPP 19 - Bushland in Urban Areas.** The PP is considered consistent with the SEPP, which requires Council to give priority to retaining bushland, unless it is satisfied that environmental, economic or social benefits will arise which outweigh the value of the bushland. The proposed sites for rezoning contain bushland; however the Coal Point and Speers Point sites contain existing dwellings. The PP also seeks to recognise the existence of bushland on the properties at Lonus Avenue, Whitebridge and rezone this for conservation to strengthen the corridor which connects to the Glenrock State Conservation Area.

* **SEPP 44 - Koala Habitat Protection.** Council indicates no flora or fauna investigations have been undertaken. However Council notes that the current use and locality of the land at Coal Point and Speers Point is within a residential neighbourhood, and have dwellings constructed on the sites. The proposed residential zoning sites are less than 1 hectare, and any future development of the land can be adequately addressed under Council's existing local planning controls and development assessment process. The land at Whitebridge is to be conserved within an environmental zone. The PP is consistent with the SEPP.

* **SEPP 55 - Remediation of Land.** Council indicates that no contamination investigations have been undertaken, however a site inspection revealed that the land is unlikely to be contaminated given the existing residential dwellings and uses occurring on the land. However, as per the SEPP requirements, Council has not indicated in the PP that the land is suitable for all the permitted uses/purposes within a residential zone. Also, Council notes that the property at Thompson Road, Speers Point is within proximity to the former Pasminco Lead Contamination Grid. A preliminary investigation of the land in accordance with the contaminated land planning guidelines has not been included within the PP, and further advice is required to ensure consistency with the SEPP.

* **SEPP 71 - Coastal Protection.** The properties at Coal Point and Speers Point are located within the coastal zone, but have existing dwellings constructed upon the land. The PP is considered sufficiently consistent with the aims and objectives of the SEPP.

Ministerial Section 117 Directions

* **1.1 Business and Industrial Zones** - The PP seeks to remove 'childcare centres' as permissible development within the 4(1) Industrial (Core) zone in the LM LEP 2004, and within the IN1 General Industrial Zone in draft LM LEP 2013. Childcare centres will still be permissible within the 4(2) Industrial General Zone and 4(3) Industrial (Urban Services) Zone in draft LM LEP 2004, and within the IN2 Light Industrial Zone in LM LEP 2013. The PP is consistent with the s117 Direction as it protects employment uses in industrial zones, whilst also not reducing industrial uses in industrial zones.

* **2.1 Environment Protection Zones** - The PP must not reduce the environmental protection standards that apply to the land, and must facilitate the protection and conservation of environmentally sensitive areas. The PP seeks to rezone properties at Coal Point and Speers Point from a conservation to a residential zone to reflect the current use of the land as residential. As such additional development potential is limited and any inconsistency with the s117 Direction can be considered of minor significance with minimal impacts to the environment resulting from the rezonings. Consequently, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

* **2.2 Coastal Protection** - The properties at Coal Point and Speers Point are located within the coastal zone, but have existing dwellings constructed upon the land. Any future development of the land can be adequately addressed under Council's existing local planning controls and development assessment process giving consideration to the NSW Coastal Policy and associated guidelines. Consequently, the PP is considered consistent with this direction.

*** 2.3 Heritage Conservation** - A PP must contain provision to facilitate the conservation of heritage. The rear of 43 Thompson Road, Speers Point; and 16A and 24A Lonus Avenue, Whitebridge; are identified by Council as being within a Sensitive Aboriginal Cultural Landscape area. The PP will not affect these areas, which will be maintained in a conservation zoning. Any future development of the land can be adequately addressed under Council's existing local planning controls and development assessment process. Therefore the PP is considered consistent with the s117 Direction.

*** 3.1 Residential Zones** - The PP seeks to rezone 0.24 hectares at Lonus Avenue, Whitebridge from a residential to a conservation zone. In accordance with the s117 Directions a PP must include provisions that encourage the provisions of housing, and not contain provisions which will reduce the permissible residential density of the land. Council indicates the PP will minimise the impact of residential development on the environment and resource lands as identified in objectives of the s117 Direction. The owner of the land (RMS) have raised concerns with the proposed land rezoning for conservation purposes. Consistency with this s117 Direction will need to be clarified following exhibition.

4.1 Acid Sulfate Soils - The properties at Coal Point and Speers Point contain Class 5 Acid Sulfate Soils. Council's LEP and DCP contain appropriate provisions to ensure impacts are minimised. The PP is considered consistent with this s117 Direction.

4.2 Mine Subsidence and Unstable Land. All properties proposed for rezoning are located within mine subsidence districts. Council intends to consult with the Mine Subsidence Board post Gateway in accordance with the s117 Direction. Consistency with this Direction will be clarified following this consultation.

4.4 Planning for Bushfire Protection - All properties proposed for rezoning are identified as bushfire prone land. Therefore consultation with the NSW Rural Fire Service prior to exhibition is required. Consistency with this s177 Direction will be clarified following this consultation.

5.1 Implementation of Regional Strategies - There are no specific actions or outcomes relating to minor rezonings, and permissibility of childcare centres in the LHRS. The sites are not specifically identified in the LHRS, however the PP outcomes are considered sufficiently consistent with the intent of the LHRS.

6.2 Reserving Land for Public Purposes - A PP must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the DG of Planning. The PP seeks to remove the acquisition layer from 13 Whitelocke Street, Coal Point and rezone this property from conservation to a residential zone. Council identified the property as part of the Coal Point ridgeline to be utilised for public purposes. However as the adjoining property is still identified for acquisition to allow access to this ridgeline, Council states that the property is no longer required for public purposes. With the approval of the Director General (or delegate) the PP is consistent with this direction.

Lifestyle 2030 Strategy (not endorsed)

The PP is considered consistent with the objectives and outcomes of the Lifestyle 2030 Strategy. Council considers the rezoning at Lonus Avenue, Whitebridge to an environmental zoning as being part of an area identified for biodiversity connectivity and conservation as shown in the Lifestyle 2030 Strategy - Green Systems Map and the Urban Structure Map, and forming part of a corridor connecting to Glenrock State Conservation area.

Environmental social
economic impacts :

Council has assessed the environmental, social and economic outcomes of the site. The PP is considered appropriate given the proposed zone changes reflect the current use of the sites. The PP will have negligible environmental impacts, and the site at Lonus Avenue is to be rezoned to protect its identified conservation values as shown in the Lifestyle 2030 Strategy - Green Systems Map and the Urban Structure Map, and forming part of a corridor

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connecting to Glenrock State Conservation area.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation : **RPA**

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
Proposal_Lake_Macquarie_City_Council_02-12-2013_P	Proposal	Yes
P_Zone_Anomalies_and_Childcare_Permissibiliy.pdf		
Council_Minute.pdf	Proposal	Yes
Report_to_Council.pdf	Proposal	Yes
Planning_Proposal_Reported_to_Council_25_Novembe	Proposal	Yes
r_2013_Zone_Anomalies_and_ChildCare_Centres.pdf		
Evaluation_Criteria_for_issuing_of_an_Authorisation.p	Determination Document	Yes
df		
Roads_and_Maritime_Service_letter_of_objection.pdf	Proposal	No

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**

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- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 6.2 Reserving Land for Public Purposes

Additional Information : The Planning Proposal should proceed with conditions:

1. The planning proposal should be finalised as an LEP within 6 months. A 6 month time-frame is recommended based on Council's projected timeline and because of the relative minor nature of the planning proposal.

2. A 14 day community consultation exhibition period is recommended because of the relative minor nature of the planning proposal.

3. Consultation with relevant State authorities and agencies are listed below:

- * Mine Subsidence Board (to determine consistency with s117 Direction - 4.2 Mine Subsidence and Unstable Land)
- * Rural Fire Service (to determine consistency with s117 Direction 4.4 Planning for Bushfire Protection)
- * Roads and Maritime Services

Prior to undertaking public exhibition, Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made.

4. The Director General (or delegate) agree with the following section 117 Direction inconsistency - 2.1 Environment Protection Zone; as the inconsistency with the terms of the s117 Direction is of minor significance. In relation to s117 Direction - 6.2 Reserving Land for Public Purposes, the DG agrees to the reduction of the land for public purposes on the basis of the land's small size, current use, and alternative acquisition site. Consistency with s117 Direction - 3.1 Residential Zones, 4.2 Mine Subsidence and Unstable Land and 4.4 Planning for Bushfire Protection will need to be clarified following consultation and/or exhibition.

5. Council provide advice that the land is suitable for the permitted uses/purposes within a residential zone for the purposes of SEPP 55.

6. Council has identified a site in Coal Point that will be removed from Council's Land Reservation Acquisition map under draft LM LEP 2013. A map reflecting this amendment needs to be included in the planning proposal for exhibition purposes.

7. Council exercise their plan making delegations under section 59(1) of the EP&A Act. However, if there is an unresolved Agency objection, Council is unable to use their delegations.

Supporting Reasons :

* Lake Macquarie has identified the need for this administrative amendment to meet the operational needs of Council and make zoning amendments.

* Council has identified in the PP a 6 month timeframe to complete the PP.

* The PP is relatively minor in nature, consequently it is considered appropriate to delegate the plan making function to Council. However, it is noted that Roads and Maritime Services, as an owner of subject land, has raised concerns with the rezoning of Part of 16A, and Part of 24A Lonus Avenue, Whitebridge from 2(1) Residential to 7(2) Conservation (Secondary) which needs to be resolved.

Signature:



Printed Name:

K. O'FLAHERTY

Date:

12/12/13

