

5. Zone anomalies and childcare centres (PP_2013_LAKEM_016_00)

PROPOSAL

The planning proposal aims 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 Point, from a Conservation to a 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 a residential to a conservation zone to reflect that this land has ecological constraints and limited development potential.

The planning proposal amends the permissibility of childcare centres within the LGA:

- The PP will add 'childcare centres' as permissible development within the RE2 Private Recreation Zone 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 IN1 General Industries zone to prohibit the use and prevent potential land use conflicts and ensure the retention of industrial land for industrial uses.

This planning proposal is not the result of any specific studies.

GATEWAY DETERMINATION

The Minister's delegate determined on 23 December 2013 that an amendment to the Lake Macquarie LEP 2004 or the draft Lake Macquarie LEP 2012 should proceed.

TIME FRAME

The Gateway Determination required completion of the planning proposal by 30 December 2014 (12 months).

AGENCY CONSULTATION

Consultation was undertaken with relevant agencies in relation to the relevant s117 directions and as required by the Gateway. Neither NSW Rural Fire Service nor the Mine Subsidence Board raised any objections.

Roads and Maritime Service were consulted as owners of the property at Lonus Avenue Whitebridge. Roads and Maritime Service indicated that they objected to the zoning of their land, currently residential to an environmental zoning unless Council was willing to purchase the land. Roads and Maritime Service's objection is not considered a formal agency objection because it is not related to the agency's core business but is an objection to the rezoning as owner of the land. This objection is therefore considered in relation to s117 direction 3.1 Residential Zones.

PUBLIC PARTICIPATION

In accordance with the Gateway Determination issued 30 December 2013, the planning proposal was exhibited for 14 days from 15 March to 7 April 2014. No public submissions were received during the exhibition period.

PUBLIC HEARING

The Gateway Determination did not require a public hearing to be held into the matter by any person or body under section 56(2)(e) of the *Environmental Planning and Assessment Act 1979*.

CHANGES MADE TO THE PLANNING PROPOSAL AFTER EXHIBITION

Council seeks to zone 0.24 hectares of residential land at Lonus Avenue, Whitebridge to environmental conservation. This portion of land adjoins the locally significant scenic path 'Fernleigh track' and is adjacent to a previously abandoned and zoned road corridor who's development has been the subject of community concern.

Council indicates that development of the site is restricted due to geotechnical instability and the presence of vegetation and potential impacts of the development on water quality and amenity. Council are also concerned about any future development of the site impacting on water quality of nearby wetlands and requiring asset protection zones within the adjoining land along Fernleigh track. Evidence provided by Council indicates that part of the site is constrained (part 16A Lonus Avenue), however part of the site is not (the majority of Part 24A).

The owner of this land, Roads and Maritime Services, has objected to the rezoning unless Council was to purchase the land. Council has considered whether or not they wish to purchase the land due to its proximity to the Fernleigh track and amenity and water quality benefits, however they have noted that the biodiversity value of the land is not high due to past disturbances. Council has indicated that the potential transfer of the land could be investigated further following completion of the rezoning.

Assessment of the matter has involved consideration of the information provided by Council, an assessment of aerial photography and a site inspection. This indicated that the site is currently partially used for residential purposes by adjoining owners (e.g. sheds, plantings and retaining walls) and large sections are maintained by these owners as parkland.

Based on the information provided it is considered reasonable to support Council's decision to back zone land where there is evidence that development is constrained by vegetation and geotechnical instability (part 16A Lonus Avenue). But further evidence is required to justify the back-zoning of the unconstrained part of 24A Lonus Avenue as proposed.

Council staff has been advised of this recommendation and indicated further consideration of the matter would require a report to Council. Any future amendment may occur as part of a future Planning Proposal. The relevant LEP maps have been amended to reflect this recommendation.

CONSISTENCY WITH STATE POLICIES AND S.117 DIRECTIONS

The planning proposal is considered consistent with applicable State Environmental Planning Policies (SEPPs).

The Gateway Determination issued 30 December 2013 advised that the inconsistency with s117 Direction 2.1 Environment Protection Zone is of minor significance, and in relation to direction 6.2 Reserving Land for Public Purposes that the reduction in land for public purposes was supported. No further approval is required for these directions.

In relation to consistency with direction 3.1 Residential Zones, the proposal is inconsistent with this direction because it seeks to zone 0.24 hectares of residential land at Whitebridge to environmental conservation. Council argues that the inconsistency is minor because the proposal is consistent with the directions objective to minimise the impact of residential development on the environment and resource land.

As outlined above it is considered reasonable to support Council's decision to rezone residential land where there is evidence that development would be constrained by vegetation and geotechnical instability (part 16A Lonus Avenue).

The inconsistency of this rezoning with the s117 direction can therefore be considered as of minor significance and the Secretary's agreement to this is required as part of the broader report.

The planning proposal is consistent with all other s117 Directions.

COUNCIL DELEGATION

Council did not have delegation to complete this LEP amendment and resolved to finalise the Planning Proposal on 10 June 2014, Council requested drafting on 30 June 2014. Inclusion within the draft LEP and finalisation at this point in time will avoid any further delays.