

**Special Report of the Director City Strategy to Ordinary Council
Meeting
25 November 2013**

**13SP102 Planning Proposal - Zone Anomalies - Speers Point, Whitebridge
and Coal Point and Permissibility of Childcare Centres**

Council Ref: RZ/6/2012 - D04690321
Report By: Strategic Landuse Planner - Angel Troke

Précis:

As an outcome of exhibiting draft Lake Macquarie Local Environmental Plan 2013 (draft LMLEP 2013), some zoning anomalies were identified for properties at 41 and Part 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal Point. They are currently zoned 7(2) Conservation (Secondary) but should be zoned 2(1) Residential to reflect their current residential use. In addition, Council resolved at the meeting of 22 April 2013 (13NM003) to investigate rezoning land near Lonus Avenue, Whitebridge from 2(1) Residential to 7(2) Conservation (Secondary).

The exhibition of draft LMLEP 2013 has also led to a review of the land use zones in which child care centres are permitted in the City. It is proposed to add child care centres as a permitted use in the 6(2) Tourism and Recreation zone in Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) and the RE2 Private Recreation zone in the draft LMLEP 2013. It also proposed to make child care centres prohibited in the 4(1) Industrial (Core) zone in LMLEP 2004 and the IN1 General Industrial zone in the draft LMLEP 2013.

This report seeks a resolution of Council to support preparation of the LEP amendment, and to forward a Planning Proposal to the Department of Planning and Infrastructure (DoPI) for a Gateway determination. The Gateway determination will set the public exhibition period, consultation requirements, and timeframes for finalisation of the amendment.

Recommendation:

Council:

- A. Supports the preparation of an LEP amendment to rezone the properties and amend the permissibility of child care centres as outlined in the Planning Proposal in Attachment 1.
- B. Requests a Gateway determination from the Department of Planning and Infrastructure pursuant to the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*, in relation to the Planning Proposal in Attachment 1.
- C. Requests 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 1979* for the Planning Proposal.
- D. Places the Planning Proposal on exhibition as directed by the Gateway determination.
- E. Notifies stakeholders and affected landowners of the Gateway determination and public exhibition period as required.
- F. Agrees that if no public submissions are received during the exhibition period, that a report be prepared, under delegation of the General Manager, and forwarded to the Minister to make the plan.

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Background:

Council has been made aware of some zone anomalies in respect of properties at 41 and Part 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal Point. These properties are currently zoned 7(2) Environmental (Conservation) and the Coal Point property contains an acquisition layer. These properties currently contain residential dwellings and associated structures and have minimal environmental conservation value. Council has been requested to rezone these properties to 2(1) Residential to reflect their current use and to remove the acquisition liability from the Coal Point property.

In addition, Council resolved on 22 April 2013 (13NM003) to investigate rezoning the entirety of Lot 2 DP 569371 (Part 24A Lonus Avenue, Whitebridge) and Lot 482 DP 555741 (Part 16A Lonus Avenue, Whitebridge) to 7(2) Conservation (Secondary). Whitebridge residents have expressed concerns about the current zoning of the land as residential. While the Roads and Maritime Services (RMS) owned land at the rear of properties in Lonus Avenue, was rezoned in 2011 from 5 Infrastructure zone to 7(2) Conservation (Secondary), small strips, approximately 20m in width remained with a residential zone, as the land had not been identified as part of the bypass corridor. These properties have limited development potential due to size, geotechnical, bushfire and ecological constraints and it is proposed these properties be rezoned for environmental conservation.

Council has also received a request to allow child care centres in the 6(2) Tourism and Recreation zone in LMLEP 2004 and in the RE2 Private Recreation zone in the draft LMLEP 2013. Child care centres are currently permissible in the 2(1) Residential, 2(2) Residential (Urban Living), 3(1) Urban Centre (Core), 3(2) Urban Centre (Support), B4 Mixed Use, 4(1) Industrial (Core), 4(2) Industrial (General), 4(3) Industrial (Urban Services), 5 Infrastructure and 6(1) Open Space zones in LMLEP 2004. In reviewing the permissibility of child care centres across these land use zones, staff identified that while child care centres are currently permitted in the 4(1) Industrial (Core) zone within the LMLEP 2004 and the IN1 General Industrial zone in the draft LMLEP 2013, this is not a suitable zone for this sensitive land use.

Proposal:

It is proposed that Council resolves to amend LMLEP 2004 to:

- Rezone 41 and Part 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal Point from 7(2) Conservation (Secondary) to 2(1) Residential. The acquisition liability will also be removed from the Coal Point property.
- Rezone Part 16A and Part 24A Lonus Avenue, Whitebridge from 2(1) Residential to 7(2) Conservation (Secondary).
- Add 'child care centres' as permissible development within the 6(2) Tourism and Recreation zone in the LMLEP 2004 to broaden the zones in which child care centres can be located with minimal land use conflicts.
- Remove 'child care centres' as permissible development from the 4(1) Industrial (Core) zone in the LMLEP 2004 to prevent potential land use conflicts and ensure the retention of industrial land for industrial uses.

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The Planning Proposal also considers amendments to draft LMLEP 2013 with equivalent zone conversions. These changes are further outlined in the Planning Proposal contained in Attachment 1 and Policy Implications section of the report.

Consultation:

Representatives from Council's Community Planning, Sustainability, Development Assessment and Compliance, Asset Management and Property departments were consulted during the preparation of the Planning Proposal.

Council staff have undertaken preliminary consultation with RMS over the proposed rezoning of the properties at Lonus Avenue, Whitebridge. The RMS outlined that whilst they generally support Council's objective to protect land that is environmentally important, they objected to the proposed rezoning of land. The RMS advised that this land has always had a residential zoning and the recent rezoning of the former proposed road corridor (East Charlestown Bypass) never affected the part of the lots proposed to be rezoned as they were outside of the former road reservation. The RMS also noted there has been no change to the use of the land to warrant the proposed zoning and that any zone change that benefited the adjoining privately owned land would be of concern to the RMS.

The Gateway determination will outline further consultation requirements including government agencies to be consulted and public exhibition timeframes.

Implications:

Policy Implications:

Implications relating to Council's Lifestyle 2030 Strategy, State Planning Policies, and Guidelines are detailed in the Planning Proposal. The Planning Proposal is generally consistent with all relevant policies and planning strategies.

Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004)

The Planning Proposal will amend the LMLEP 2004 and rezone the sites as outlined in the Proposal section of this report. The Planning Proposal will also add child care centres as permissible within the 6(2) Tourism and Recreation zone and remove their permissibility from the 4(1) Industrial (Core) zone.

Draft Lake Macquarie Local Environmental Plan 2013 (draft LMLEP 2013)

It is currently expected that draft LMLEP 2013 will be finalised in early 2014. Therefore, the Planning Proposal in Attachment 1 considers both LMLEP 2004 and draft LMLEP 2013.

Under draft LMLEP 2013, the Planning Proposal would:

- Rezone 41 and Part 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal Point from Zone E2 Environmental Conservation to Zone R2 Low Density Residential. The acquisition liability will also be removed from the Coal Point property,
- Rezone Part 16A and Part 24A Lonus Avenue, Whitebridge from Zone R2 Low Density Residential to Zone E2 Environmental Conservation, and

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- Add 'child care centres' as permissible within Zone RE2 Private Recreation and add 'child care centres' to the list of prohibited uses within the Zone IN1 General Industrial.

Lifestyle 2030 Strategy

- *41 and 43 Thompson Road, Speers Point and 13 Whitelocke Street, Coal Point*

The proposal to change these properties from zone 7(2) Conservation (Secondary) to zone 2(1) Residential, is considered consistent with Council's Lifestyle 2030 Strategy. The zone change reflects the current residential use of the land. The zone changes are minor in nature, however are considered consistent with Strategic Direction 3 – "A well designed adaptable and liveable city" and Outcome 3.19 – "There is a diversity of lot sizes and housing to meet users' needs". The properties are not within a regional centre or town centre, however are nearby to neighbourhood centres.

- *16A and 24A Lonus Avenue, Whitebridge*

The proposal to rezone 16A and 24A Lonus Avenue, Whitebridge to zone 7(2) Conservation (Secondary), is considered consistent with Strategic Direction 1 – "A City Responsive to the Environment". Outcomes 1.1 – "Biodiversity connectivity and conservation areas are identified, protected and enhanced with the major elements shown schematically on the Green Systems Map and the Urban Structure Map", and 1.2 – "Biodiversity values are protected and managed".

The area forms part of a corridor connecting to Glenrock State Conservation area.

- *Child Care Centres*

The addition of child care centres to the private recreation zone and removal from the general industrial zone is consistent with Strategic Direction 6.1 of Council's Lifestyle 2030 Strategy – "A City Responsive to the wellbeing of its residents and consistent with Council's Community Strategic Plan 2013-2023".

Lake Macquarie Development Control Plan (DCP No.1) and draft Development Control Plan 2013 (Draft DCP 2013)

Any future development applications lodged for the sites will need to consider the requirements of Lake Macquarie DCP No.1. Draft DCP 2013 also contains relevant development controls that would apply to the sites when this draft DCP becomes effective.

Lake Macquarie Community Strategic Plan 2013 – 2023

The proposal is consistent with Council's 10 Year Community Plan.

Policy for Managing Contaminated or Potentially Contaminated Land

The sites have been evaluated against Council's Initial Contamination Checklist. The properties are not located on Council's Lead Contamination Survey Grid area and are unlikely to be contaminated given their current landuse.

Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals

There are no expected impacts on biodiversity given the properties at Speers Point and Coal Point currently contain residential dwellings and are largely cleared of vegetation.

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The conservation zoning of the Lonus Avenue, Whitebridge sites will have positive biodiversity incomes by further strengthening a recognised biodiversity corridor.

Lower Hunter Regional Strategy

The zone changes are minor in nature, however are considered consistent with the Lower Hunter Regional Strategy.

Lower Hunter Regional Conservation Plan

The planning proposal is minor in nature. Amending the conservation zoning for the Lonus Avenue, Whitebridge property will protect the biodiversity corridor, which is consistent with the Lower Hunter Regional Conservation Plan.

State Environmental Planning Policies (SEPPs)

The proposal has been assessed as being consistent with the provisions of relevant SEPPs.

Section 117 Ministerial Directions

The proposal has been assessed against relevant Ministerial Directions included in the Planning Proposal in Attachment 1. The proposal is generally consistent with relevant Ministerial Directions except for minor inconsistencies with:

- Lonus Avenue, Whitebridge proposal and Direction 3.1 – Residential Zones,
- Thompson Road, Speers Point and Whitelocke Street, Coal Point proposals with Direction 2.1 - Environmental Protection Zones.

Concurrence of the Director General of the Department of Planning and Infrastructure will be sought for these minor inconsistencies.

Environmental Implications:

The planning proposal will have positive environmental impacts for the Lonus Avenue, Whitebridge site with the retention of the subject land for conservation. Further development in this area would result in further encroachment into the bushland corridor for bushfire protection and asset protection zones.

No environmental impacts are expected from the rezoning of the other sites as the zone change will reflect the current residential use of these sites.

Social Implications:

There are minimal social implications from the proposed zone changes due to the minor nature of these changes. The rezoning will give certainty to the owners of the Coal Point and Speers Point properties of the residential zoning of their properties.

There would be a positive social impact on the residents adjoining the Lonus Avenue, Whitebridge site as it would give certainty that this area would not be developed for housing, potentially creating amenity issues for those residents.

Prohibiting child care centres in the General Industrial zone will have a positive social impact by removing the potential for land use conflicts as a result of industrial noise, traffic and air quality impacts.

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The inclusion of child care centres in the 6(2)Tourism and Recreation zone in the LMLEP 2004 and in the RE2 Private Recreation zone in the draft LMLEP 2013 will have positive social impacts by increasing the amount of land in which child care centres are permissible, potentially helping to alleviate a lack of supply of child care facilities. There are minimal land use conflicts anticipated between child care centres and other uses associated with the private recreation zone. These zones currently allow similar community uses including community facilities and educational establishments. Child care centres will not be permissible in the SP3 Tourist zone in the draft LMLEP 2013, avoiding potential impacts on tourist areas within the Lake Macquarie LGA.

Infrastructure Asset Implications:

There are no anticipated infrastructure asset implications. The proposed zones will reflect the current use of the sites.

Financial Implications:

The proposal will have positive economic impacts to Council by removing the acquisition liability to purchase 13 Whitelocke Street, Coal Point.

Rezoning of land at 16A and 24A Lonus Avenue, Whitebridge from residential to conservation may reduce the market value of this land (which is owned by the Roads and Maritime Services), however planning staff consider the development potential of the site to be marginal due to bushfire and ecological constraints and poor site access.

Council staff resources will be required to process the rezoning, however this resourcing will be met by existing staff allocations and will not involve significant staff resources due to the minor nature of the amendment. It is not anticipated that any further studies would be required to rezone these properties as the zone changes reflect the current land use.

Risk and Insurance Implications:

There is minimal risk or insurance implications to Council with the processing of this amendment. The preparation of an amendment to LMLEP 2004 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and *Environmental Planning and Assessment Regulation 2000* as well as Council's Amending Local Environmental Plan Procedure and Policy.

Options:

1. Council resolves to prepare and support the Planning Proposal, and to request a Gateway determination. This will ensure that the zoning of the sites reflects their current use and addresses the zones in which child care centres are permissible. This is the recommended option.
2. Council does not support the Planning Proposal and ceases the LEP amendment process. This is not the preferred option as this will leave unresolved zoning inconsistencies and remove the potential for conflicts with child care centres in the Industrial (Core) zone.

Conclusion:

Integrated Planning has undertaken internal consultation and determined that proposed changes to LMLEP 2004 and draft LMLEP 2013 have merit. It is recommended that

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Council resolves to request Gateway determination from the Department of Planning and Infrastructure to enable the Planning Proposal to progress.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. Attachment to report to Council 25 November 2013 - Planning Proposal - Zone Anomalies and Childcare Centres | D05442084 |
| 2. Planning Proposal - Zone Anomalies and Child Care Centres | D06158373 |