



Regional Manager  
Department of Planning  
PO Box 1226  
NEWCASTLE NSW 2300

Our Reference: sp-lep-72  
Your Reference: 10/13828  
Contact: Rebecca Underwood  
Telephone: 6591 7224

28 September 2010

Dear Sir

**Re: PLANNING PROPOSALS FOR CURRENT LEPs – DRAFT AMENDMENT NO. 72,  
TROPIC GARDENS DRIVE, SMITHS LAKE**

Reference is made to the Department's letter of 16 March 2010 setting out the transitional provisions for current Local Environmental Plans.

Council seeks a review of the considerable work undertaken for above draft LEP and requests that the draft plan be brought into the current Part 3 process. The draft LEP is currently on exhibition (8 September to 22nd October 2010) in accordance with the s65 Certificate issued by the Department of Planning on 29 October 2009.

Council believes that it is important to the implementation of its strategic plans that the pending amending LEP continue as a Planning Proposal under the Gateway process. In this regard a Planning Proposal for this area is attached.

Given the considerable effort that has already been devoted to this area over recent years and in accordance with earlier advice from the Department that Council may progress with the draft LEP Amendment in question separately from its Principle LEP Council believes that the rezoning should now be finalised in as short a timeframe as possible.

Should you have inquiries regarding Council's proposal please contact me on (02) 65917224.

Yours faithfully



**R Underwood**  
**Strategic Landuse Planner**  
**Planning and Environmental Services**



## **Planning Proposal – Draft Amendment No. 72 to Great Lakes Local Environmental Plan 1996**

### **Background**

This Planning Proposal is for the transfer of draft Amendment No. 72, Great Lakes Local Environmental Plan 1996 to the Gateway Process.

Draft Amendment No. 72 provides for urban expansion in conjunction with protection of important environmental features within the Village of Smiths Lake. This will be achieved by rezoning about 42ha of land from 1(c) Future Urban Investigation zone to 2 Village zone (about 9ha) and 7(a1) Environmental Protection zone (about 33ha).

Part of the land was identified in Council's Forster/Tuncurry Conservation and Development Strategy as having potential for urban development. This part of land has also been identified in the Mid North Coast Regional Strategy's Growth Area maps as an area with potential for future urban development with constraints. Detailed studies undertaken as part of the rezoning process have identified a larger more suitable development footprint which responds to the natural features of the land.

The department on 21 July 2010 advised Council that the minor expansion of the rezoning area beyond that shown the Mid North Regional Strategy Growth Area Maps was acceptable.

### **Property Details**

The planning proposal applies to Lot 11 and 12 DP 593531, Tropic Gardens Drive Smiths Lake.

A locality plan, aerial image and draft LEP map are contained in Part 5, Explanatory figures.

### **Status of current draft LEP**

- 26/9/06 - s54 resolution by Council.
- 20/3/07 - Department of Planning notified of Council's s54 resolution.
- 18/7/07 - s62 consultation with Government Agencies.
- 29/10/09 - s65 certificate and Authorisation to Exercise Delegation issued.
- 21/7/10 - Director General advised that inconsistencies with Direction 5.1 *Implementation of Regional Strategies* is considered minor.
- 2/9/10 - Local Environmental Study prepared and forwarded to the Department of Planning.
- 3/9/10 - Government Agencies notified of pending public exhibition.
- 8 September to 22 October 2010 - draft LEP placed on public exhibition.

# INFORMATION REQUIRED TO BE SUBMITTED WITH PLANNING PROPOSALS

## Part 1 - Objectives or intended outcomes of local environmental plan

*The objectives are to:*

- A. *To enable the development of Lot 11 and Lot 12 DP 593531, Smiths Lake for low density housing.*
- B. *To ensure the protection of features of ecological importance.*
- C. *To ensure that there is a no net increase in stormwater pollutants as a result of development.*

## Part 2 - Explanation of provisions

The land use zones proposed to be applied to the land are:-

- 2 Village - approximately 9 ha
- 7(a1) Environmental Protection - approximately 33 ha over land that contains Endangered Ecological Communities and significant habitat.

The draft LEP will also include special provisions to:

- Ensure that a legally binding mechanism is in place, to the satisfaction of Council for the long term protection, management and maintenance, for conservation purposes, of that part of the land proposed to be rezoned for environmental protection.
- Ensure that water quality management facilities are constructed and managed to the satisfaction of Council so that the quality of stormwater discharged from any development of the land will result in no net increase in total suspended solids, total phosphorous and total nitrogen when compared to the quality of stormwater discharged from the land prior to development.

## Part 3 - Justification

### **a) Need for planning proposal**

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

Council's Forster/Tuncurry Conservation and Development Strategy, which was adopted by Council in 2003 nominated part of the land for urban expansion. Detailed studies prepared as part of the rezoning process have identified a larger, more suitable development envelope which accurately responds to the inherent natural attributes of the land.

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

Rezoning of the land by way of a planning proposal will give a sound social, economic and environmental outcome for the community and implement a key component of the Forster/Tuncurry Conservation and Development Strategy.

The rezoning of the land for residential purposes is the only way to facilitate further growth in this area and will enable a choice in housing locations and styles to cater for the various markets. Rezoning and development of the land for residential development has the potential to yield about 80 residential lots which includes some opportunity for medium density housing.

The rezoning of that part of the land for residential development has enabled Council to negotiate significant environmental outcomes across ecologically sensitive areas of the land. Council considers that the rezoning of these areas provides the best means of meeting environmental objectives. DECCW has recently advised Council that they support the draft LEP.

3. Is there a net community benefit?

Council considers the significant environmental outcomes in conjunction with proposed infrastructure improvements and potential for further growth in the Village of Smiths Lake constitutes a net community benefit.

**b) Relationship to strategic planning framework**

1. Consistency with objectives and actions contained within applicable regional study.

Part of the land is nominated in the Mid North Coast Regional Strategy Growth Area Maps as an area with potential for future urban development with constraints. Detailed environmental studies prepared as part of the rezoning process have identified a larger area which accurately responds to the inherent natural attributes of the land. The Regional Strategy indicates that where demonstrated through a local growth management strategy or rezoning process that a reasonable adjustment to a growth area boundary is desirable and is consistent with the Regional Strategy, then variation of the boundary may be considered. In line with this the Director General has advised that inconsistencies with the Regional Strategy are considered minor.

2. Consistency with Council's Community Strategic Plan?

Council has not as yet produced its final Community Strategic Plan but has exhibited a draft plan that was prepared after considerable community engagement. The planning proposal is consistent with two of the two Key Directions that emerged as critical issues from the community engagement being "Embracing and Protecting Our Natural Environment" and "Planning for Balance".

3. Consistency with applicable state environmental planning policies.

SEPP No 71 – Coastal Protection and SEPP 44 - Koala Habitat Protection are applicable to the land. The planning proposal is consistent with the stated SEPPs.

4. Consistency with applicable Ministerial Directions (117 directions).

The planning proposal is consistent with the relevant 117 Directions. The Director General has advised that inconsistencies with Direction 5.1 *Implementation of Regional Strategies* are considered minor.

### **c) Environmental, social and economic impact**

#### 1. Likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

A number of Endangered Ecological communities, as listed under the *Threatened Species Conservation Act 1995*, have been identified over the land. These areas including important habitat for threatened species are proposed to be rezoned for environmental protection.

#### 2. Any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

##### *Tree removal*

It will be necessary to remove a number of trees in conjunction with the development of the land. To manage this impact, a DCP will be prepared which requires buildings to be located so as to minimise tree removal. Where tree removal is unavoidable compensatory plantings will be required at ratios satisfactory to Council. Where tree hollows are removed nest boxes should be built and installed at a ratio of three nest boxes for each hollow lost, in suitable trees outside of the proposed urban footprint.

##### *Aboriginal significance*

An area which was deemed to have potential Aboriginal significance was identified during archaeological investigations. This area in question known as "The Knoll" or headland is proposed to be rezoned for environmental protection to maintain its visual significance.

##### *Stormwater quality*

All stormwater runoff from future urban development on the land will discharge into a freshwater lagoon then and ultimately to Smiths Lake. Council's Great Lakes Water Quality Improvement Plan has identified the current ecological condition of Smiths Lake as being of high conservation value but has indicated a vulnerability to nutrient and sediment runoff. Water quality management will therefore have to be of the highest possible standard. Council will require that any future development should implement water-sensitive urban design principles and in particular, that development should achieve a no net increase in pollutants when compared to the pre-development land use.

#### 3. How has the Planning Proposal adequately addressed any social or economic effects?

Proposed upgrades to existing infrastructure will positively benefit the community while population growth will have economic benefits for local shops and businesses.

#### **d) State and Commonwealth interests**

*Is there adequate public infrastructure for the planning proposal?*

There is adequate infrastructure available to service the development.

*What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the Planning Proposal?*

The following Public Authorities were consulted during the preparation of the planning proposal:

- Roads and Traffic Authority
- NSW Department of Water and Energy
- Hunter New England Health Service
- NSW Heritage Office
- Hunter Central Rivers Catchment Management Authority
- NSW Marine Parks Authority
- Telstra
- MidCoast Water
- NSW Department of Primary Industries
- CountryEnergy
- NSW Rural Fires Service
- Department of Environment Climate Change and Water.
- NSW Department of Education and Training
- Optus Communications

There were no unresolved objections from the stated authorities.

#### **Part 4 - Community consultation**

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Notification of the exhibition of the draft LEP was given in Great Lakes Advocate on 15 September 2010. A Media Release detailing the rezoning proposal was prepared and published in the Great Lakes Advocate on 22 September 2010. Individual letters were sent to all property owners in Smiths Lake village advising of the exhibition period and notifying of a Community Information Session to be held to discuss the proposed rezoning. The Community Information Session (which was also notified in the Great Lakes Advocate in conjunction with the notification of exhibition) was held at the Pacific Palms Community Hall on 16 September 2010, a total of 18 persons attended the session.

## Part 5 - Explanatory figures

Figure 1 - Locality plan (yellow line indicates study area)

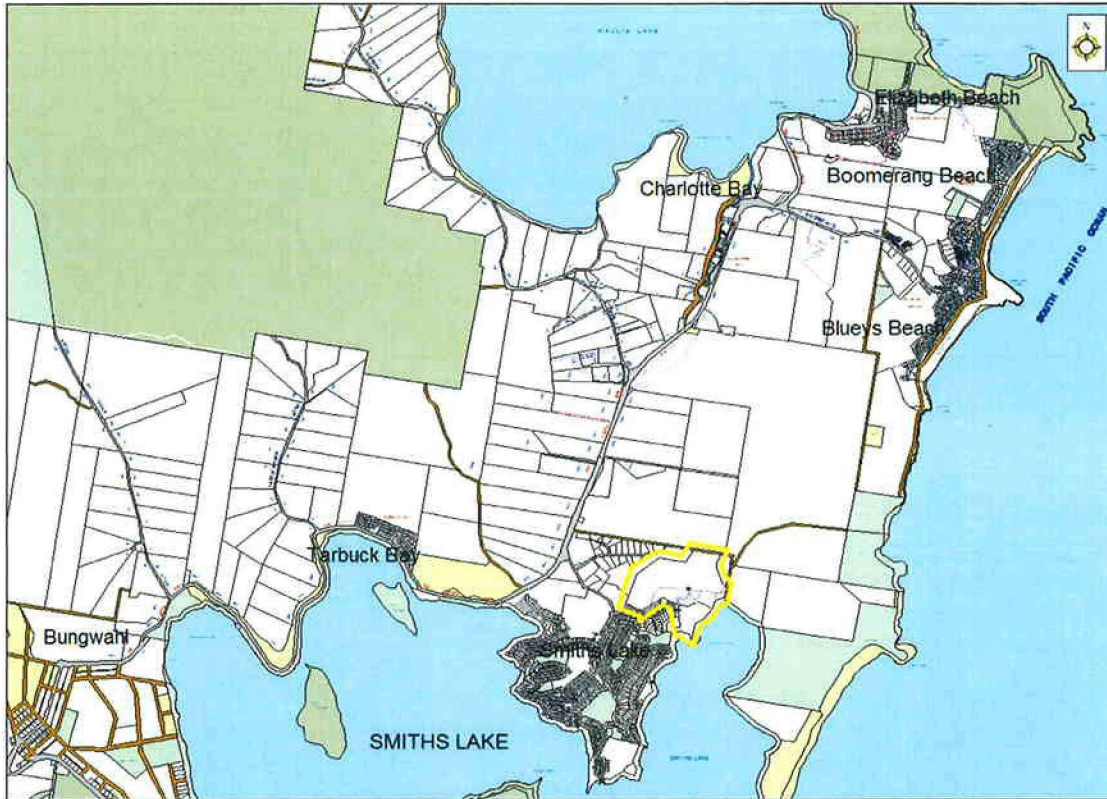
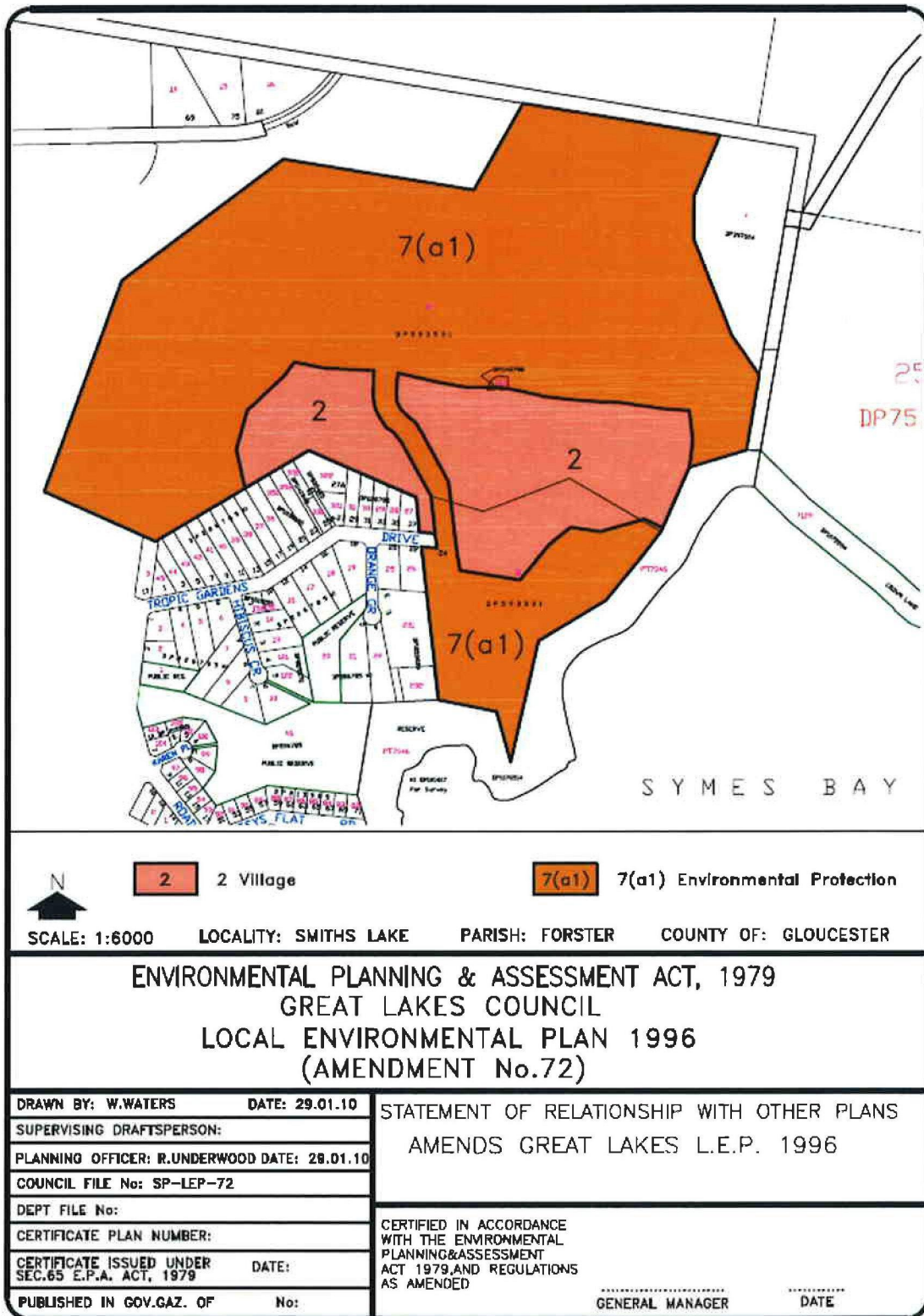


Figure 2 – Aerial image (yellow line indicates study area)



Figure 3 – Draft LEP map and draft LEP Written Instrument (exhibited version)





**Great Lakes Council Local Environmental Plan 1996  
(Amendment No. 72)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Planning, make the following local environmental plan under the  
*Environmental Planning and Assessment Act 1979.*

Minister for Planning

1	...	...
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**Great Lakes Council Local Environmental Plan 1996  
(Amendment No. 72)**

under the

Environmental Planning and Assessment Act 1979

**1      Name of Plan**

This plan is *Great Lakes Local Environment Plan 1996 (Amendment No. 72)*.

**2      Commencement**

This Plan commences on the day which it is published on the NSW legislation website.

**3      Land to which Plan applies**

This plan applies to Lots 11 and 12 DP 593531 and Lot 123 DP 1142798, Tropic Gardens Drive, Smiths Lake, as shown edged heavy black on the map marked "Great Lakes Local Environmental Plan 1996 (Amendment No 72)" deposited in the office of the Great Lakes Council.

## Schedule 1

## Amendment of Great Lakes Local Environmental Plan 1996

### [1] Schedule 3 Consent to development subject to special requirements

Insert after the entry relating to "Land at Failford Rd, being the land affected by Amendment No. 79 to Great Lakes Local Environmental Plan 1996."

#### Smiths Lake

- Lot 12 DP 593531, Tropic Gardens Dr
- Lots 11 and 12 DP 593531, Tropic Gardens Dr
1. A legally binding mechanism is in place, to the satisfaction of the consent authority, to ensure the long term protection, management and maintenance, for conservation purposes, of that part of the land zoned 7(a1) Environmental Protection.
  1. Water quality management facilities will be constructed that ensure, to the satisfaction of the Council, the quality of stormwater discharged from any development of the land will result in no net increase in total suspended solids, total phosphorus and total nitrogen when compared to the quality of stormwater discharged from the land prior to the development.
  2. Arrangements satisfactory to the Council have been, or will be made for the ongoing maintenance of the water quality management facilities referred to in 1 above.

### [2] Dictionary

Insert at the end of the definition of **Map**:

Great Lakes Local Environmental Plan 1996 (Amendment No 72)