

**Draft Amendment No 57 to Lake Macquarie LEP 2004 -
Pasminco (Stage Two) and Incitec Land - Boolaroo**

Council Ref: RZ/14/2007 - D01536037
Report By: Strategic Planner - Andrew Donald

Précis:

Council resolved on 10 December 2007 to prepare an amendment to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to allow the rezoning of land at Boolaroo to enable the second stage of redevelopment of the former Pasminco Cockle Creek Smelter site and the adjoining Incitec Fertilizer plant site. A Local Environmental Study (LES) has been prepared and consultation was undertaken with relevant government agencies in accordance with Section 62 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act), to determine the most suitable zones for the area.

Due to changes to the EP&A Act, and in order to proceed, the draft amendment must be converted to a Planning Proposal and submitted to the Department of Planning's (DoP) for Gateway determination. The Gateway will advise of the required exhibition periods, consultation requirements, and timeframes for the finalisation of the draft amendment.

Recommendation:

Council:

- A. Requests a Gateway Determination from the Department of Planning in relation to the Planning Proposal at Attachment 1.
- B. Resolves to place the Planning Proposal on exhibition, subject to the outcome of the Gateway Determination.
- C. Notifies stakeholders and affected landowners of the Gateway Determination and public exhibition period, if required.

Background:

On 10 December 2007, Council resolved to prepare an amendment to LMLEP 2004 for a stage two rezoning of the former Pasminco Cockle Creek Smelter site and the adjacent Incitec Fertilizer plant site (07STRAT77). The Department of Planning (DoP) was notified of Council's resolution on 11 January 2008. The DoP advised Council that a Local Environmental Study (LES) was required. A master plan, LES and a number of specialist studies have been completed by the proponent and reviewed by Council staff.

Consultation with relevant government agencies has occurred in accordance with section 62 of the EP&A Act 1979.

The Pasminco site is currently being remediated in accordance with a Part 3A (major project) application approved by the Minister for Planning in May 2007. The Incitec site is

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also to undergo remediation with a separate Part 3A application having been recently approved by the DoP.

Progress on the rezoning slowed while traffic and land use issues associated with the stage one rezoning of the Pasminco site were being resolved. The stage one rezoning was finalised with the publication of Amendment 21 to LMLEP 2004 on 3 September 2010.

Proposal:

It is proposed that Council:

- Supports the conversion of the draft LEP Amendment to a Planning Proposal under Part 3 of the EP&A Act 1979 (see Attachment 1);
- Seeks a Gateway Determination on the Planning Proposal from the DoP, pursuant to Section 56(2) of the EP&A Act 1979; and
- Places the Planning Proposal on public exhibition, although exhibition is subject to the outcome of the Gateway Determination.

The Planning Proposal involves amending LMLEP 2004 to rezone approximately 85 hectares of land at Boolaroo from 4(1) Industrial (Core) and Zone 7(2) Conservation (Secondary) Zones to 2(1) Residential, 2(2) Residential (Urban Living), B4 Mixed Use, 4(2) Industrial (General) and 7(2) Conservation (Secondary) Zones. The areas of the proposed zones are as follows:

2(1) Residential	63 hectares
2(2) Residential (Urban Living)	5.6 hectares
B4 Mixed Use	6.2 hectares
4(2) Industrial (General)	6.3 hectares ⁽¹⁾
7(2) Conservation (Secondary)	3.9 hectares ⁽²⁾

Notes: ⁽¹⁾ includes a 2.5 hectare parcel owned by LMCC comprising a stormwater detention basin
⁽²⁾ in addition to 51 hectares currently zoned 7(2) outside remediation boundary

The Planning Proposal also involves amending LMLEP 2004 to require a site-specific Development Control Plan (DCP) be prepared for those parts of the site to be zoned 2(1) Residential, 2(2) Residential (Urban Living), B4 Mixed Use, 4(2) Industrial (General) and 7(2) Conservation (Secondary), and stipulates there must be no significant land use conflicts between the proposed development and the ongoing remediation of the remainder of the site. Similar requirements were included in Amendment 21 to LMLEP 2004 for the first stage of rezoning of the Pasminco lands.

The remediation strategies for both the Pasminco and Incitec sites involve the construction of on-site containment cells for the isolation of contaminated soil and materials. The areas of these containment cells are to be excluded from the proposed rezoning and will therefore retain the current 4(1) Industrial (Core) zoning that applies to the land. It is intended that these areas be zoned SP1 Special Activities under Lake Macquarie Local Environmental Plan 2011.

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Changes to draft Lake Macquarie LEP 2011, the new citywide LEP being prepared in accordance with Standard Instrument template, will be required as a result of the Planning Proposal. The anticipated changes are outlined in the Planning Proposal at Attachment 1.

Consultation:

Relevant departments within Council, including Community Planning, Sustainability, and Asset Management, assisted in reviewing the LES.

The following government authorities provided responses pursuant to section 62 of the EP&A Act 1979.

Department of Planning – Heritage Branch	Koompahtoo Local Aboriginal Land Council
Department of Environment and Climate Change	Mine Subsidence Board
Department of Natural Resources	Hunter Water
Hunter New England Area Health Service	Energy Australia
Department of Primary Industries	NSW Rural Fire Service
Roads and Traffic Authority	Hunter-Central Rivers Catchment Management Authority

A summary of submissions from government authorities at the section 62 consultation stage are provided below along with a planning comment where required.

Department of Planning – Heritage Branch

The LES should make recommendations for the interpretation of any archaeological relics, if any are retained as a result of archaeological investigations. Council should ensure that the final heritage report is included in its Local Studies Collection. Council should ensure that the rezoning of the site would allow for the continued use and conservation of any heritage items or relics that might be retained in situ in an appropriate manner.

Planning Comment:

Heritage has been considered in the master plan and LES and a Heritage Interpretation Plan has been prepared at Council's request. While most structures were deemed too contaminated to be retained, the old Pasminco Laboratory building is to be conserved. Council granted development consent in March 2010 for alterations and additions to the old laboratory building to allow it to be used as administration offices associated with the remediation and redevelopment of the Pasminco site.

Hunter Water

No objection is raised to the proposal, however various upgrades to the water and wastewater reticulation networks may be required prior to servicing the proposed development.

Recycled water opportunities should be considered, with the site being identified as a potential site for reuse due to close proximity to Edgeworth Waste Water Treatment Works.

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Detailed developer funded water and wastewater servicing strategies will be required in the future.

Koompahtoo Local Aboriginal Land Council (KLALC)

The KLALC would be pleased to see Munibung Hill retained within a conservation zone.

Parts of Munibung Hill are considered a sacred Aboriginal site and the KLALC would not want this area disturbed. Consultation should occur with the KLALC before any developments take place.

Planning Comment:

Further comment from the relevant Aboriginal Land Council will be invited during public exhibition of the Planning Proposal.

NSW Rural Fire Service (RFS)

A large area of the southern part of the site and adjoining land to the east and southeast is identified as bush fire prone on the Lake Macquarie Bush Fire Prone Land Map.

The RFS has no objection to the rezoning, however advises that any future residential subdivision will need to comply with the requirements of *Planning for Bush Fire Protection*, and would be subject to assessment in accordance with section 100B of the *Rural Fires Act 1997*.

Housing NSW

Council is encouraged to make provisions within the draft LEP Amendment to improve the supply of affordable housing.

Planning Comment:

The proposed development has the potential to improve housing affordability in the area by adding new housing stock in the form of standard density and medium density residential development.

Mine Subsidence Board

No objection is raised to the proposed rezoning. The applicant should seek the Board's approval for any proposed subdivision or the erection of improvements at the appropriate time.

Energy Australia

New residential subdivisions within the council area will require additional electrical infrastructure and may require the acquisition of easements, however it appears there are no major constraints affecting the ability of Energy Australia to provide electricity to the subject land.

Roads and Traffic Authority (RTA)

The proposal for two intersections on T C Frith Drive is supported in principle, but the RTA does not require a second intersection on T C Frith Avenue (in addition to the intersection of the Munibung Road extension with T C Frith Avenue).

All road works to be undertaken will be at full cost to the developer and at no cost to the RTA or Council. The applicant will be required to enter into a Works Authorisation Deed with the RTA for any works affecting the State Road network.

Planning Comment:

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The RTA has written to Council several times. The most recent letter, dated 30 September 2010, clarifies that the RTA does not require a second intersection on T C Frith Avenue (in addition to the intersection of the Munibung Road extension with T C Frith Avenue). The letter also stated that, should a second intersection be proposed in the future, RTA concurrence will be required and the RTA will not contribute to its cost.

Hunter New England Area Health Service

The site has a long history of industrial contamination of soil, which should be addressed before residential development occurs. The current remediation plan requires that all land to be rezoned as residential will have contaminated soil removed and a Site Auditor will validate the final remediation as safe. This is an adequate assurance of health protection.

To maximise health and social outcomes, future development should consider:

- street design (such as a grid design) that minimises distances between lots and facilities and open space;
- safe and convenient footpaths and cycleways to facilities, the Lake and Glendale;
- safe and convenient public transport;
- provision of affordable and healthy food within the proposed commercial and industrial areas.

Planning Comment:

Where practical, the health and social outcomes will be addressed in the DCP that will be required to be prepared for the site prior to development consent.

Department of Environment, Climate Change and Water (DECCW)

These sites are declared remediation sites under the *Contaminated Land Management Act 1997*. DECCW will regulate the remediation activities and will be assessing the remediation works to be satisfied that they are suitable for the proposed new uses/zoning.

The following issues should be considered:

- Impacts on flora and fauna and threatened species and high conservation value areas.
- Potential land use conflicts including air and noise pollution and odour.
- Aboriginal cultural heritage and the views of the Aboriginal community groups - the proposed LEP should not impact on areas of cultural significance.
- Management of stormwater to prevent impacts on adjacent waterways.

Planning Comment:

Studies have been prepared to address DECCW issues. An odour assessment has not been included. Odour issues will be addressed during the assessment of future development applications.

Department of Primary Industries (DPI)

The DPI Minerals has no objections to the proposed rezoning of the former Pasminco smelter and Incitec sites, providing underground mining is permissible with development consent. The sites are within the Lake Macquarie Mine Subsidence District and therefore any development of the area must be referred to the Mine Subsidence Board and the DPI.

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The Speers Point quarry is located 120m to the south of the site and this needs to be considered in allowing rezoning and development of the southern most section of the site.

Stormwater management issues should be addressed at any development application stage. *Guidelines for the Assessment of Aquatic Ecology* were provided for consideration in the preparation of the LES for the site.

Planning Comment:

SEPP Mining, Petroleum Production, and Extractive Industries makes provision for the permissibility of underground mining on any land.

Council has consulted with the Mine Subsidence Board regarding the rezoning of the site and no objections were raised.

The Speers Point quarry ceased operations in 2007 and is currently being investigated for rezoning. No land use conflicts are anticipated between the proposed developments.

Consideration will be given to stormwater management at the development application stage. The LES considers stormwater management in the Site Trunk Services Strategy prepared for the site.

Hunter-Central Rivers Catchment Management Authority (CMA)

The *Native Vegetation Act* 2003 does not apply to the clearing of the site, which is subject to the Part 3A approval under the EP&A Act 1979 for the remediation of the site. However, the *Native Vegetation Act* 2003 would apply in the land zoned 7(2) Conservation (Secondary) if clearing was to exceed the remediation area and if this were the case, offsets would be required. The CMA requested Council to limit the extent of land to be rezoned to those areas being remediated.

The CMA requested Council consider Guiding Principles from the Hunter and Central Rivers Catchment Action Plan prior to rezoning to ensure all significant environmental values are appropriately considered. These Guiding Principles relate to protection of regionally significant vegetation, threatened species, and the consideration of key threatening processes. In addition, one of the Guiding Principles is concerned with limiting development to primarily cleared land.

Planning Comment:

The area to be rezoned is limited to the areas being remediated.

The Guiding Principles from the Hunter and Central Rivers Catchment Action Plan have been considered in the rezoning. An *Angophora Inopina* reserve will be established to protect this threatened species.

Comments will be invited from the public if the Planning Proposal is placed on exhibition. Any comments that are received will be considered in the finalisation of the Planning Proposal. A report on the outcome of the public exhibition process including any submissions received is intended to be presented to Council following exhibition.

Implications:

Policy Implications:

Lifestyle 2020 Strategy

This Planning Proposal is consistent with the goals of Lifestyle 2020 in relation to:

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- Allowing appropriate redevelopment of a disused heavy industrial site,
- Providing opportunities for mixed use development,
- Providing zoning that supports a range of housing types close to public transport and other services, and
- Improving transport connections with surrounding areas, particularly the extension of Munibung Road through to the Arterial Road, T C Frith Avenue, and the connection to Delaware Drive, Macquarie Hills.

Lower Hunter Regional Strategy (LHRS)

The Planning Proposal is consistent with a number of objectives and outcomes in the Lower Hunter Regional Strategy. In particular, redevelopment of the Pasminco and Incitec Pivot sites will support the growth of the nearby emerging major regional centre at Glendale.

The Planning Proposal would zone 6.2 hectares of land for mixed-use development and 3.9 hectares for light industrial uses, which, along with the 4 hectares zoned for business and 21 hectares zoned for light industrial uses in the stage one rezoning, will ensure a significant part of the site provides for employment-generating development. The proposed zoning provides the potential for an equivalent or greater number of jobs to be located on the site compared to when the smelter and fertilizer plant were still operational.

Importantly, the proposed zoning will mean the site (including the section already rezoned) has the capacity to accommodate over 1000 dwellings in a strategic infill location.

State Environmental Planning Policies (SEPPs)

Relevant SEPPs have been considered in the preparation of the Planning Proposal (refer to Attachment 1). The draft Amendment is consistent with the relevant SEPPs and no issues have been identified that would prevent the Planning Proposal being placed on public exhibition.

Section 117(2) Ministerial Directions

The Planning Proposal is generally consistent with the relevant Ministerial Directions (made Pursuant to section 117(2) of the EP&A Act 1979. A table showing the relevant directions and comments against each is included in the Planning Proposal documentation at Attachment 1. In the two instances where the Proposal is inconsistent with those directions, justification has been provided for the inconsistencies.

Environmental Implications:

Environmental implications of the rezoning have been addressed in the LES prepared for the site.

The Pasminco site is currently being remediated in accordance with a Part 3A (major project) application approved by the Minister for Planning in May 2007. This includes a number of different techniques and procedures, but generally comprises excavating contaminated material from the various parts of the Pasminco site and placing the contaminated material in a capped containment cell. The remediated areas will be re-filled and/or regraded to achieve expected future development levels as necessary.

The remediation will include the construction and use of environmental controls during and after the remediation including surface and groundwater controls for the cell and a

treatment plant to treat potential future leachate and groundwater that may be emitted from the cell. It is proposed that the land on which the cell and leachate treatment plant are located will, through future subdivision of the site, form part of either the 'common property' of a strata scheme or the 'community property' of a community scheme. The cost of the ongoing maintenance of the cell and leachate plant will be funded by contributions levied under relevant strata titles or community titles legislation, on the owners of the various lots within the subdivision.

There are certain areas on the western part of the Pasminco site and on Munibung Hill that are too steep for development or safe access by heavy machinery. These areas will not be remediated. For these areas, the DoP have required (as a condition of consent for the Part 3A approval) the proponent prepare and implement an Environmental Management Protocol in consultation with Council and the Hunter – Central Rivers CMA.

A major project application for the remediation of the Incitec Fertilizer site is currently under assessment. It is proposed that a second, smaller containment cell be constructed on the Incitec site. The containment cell would be fully lined and designed to create a low-maintenance repository structure for on-site contaminated materials with limited potential for impacts to the surrounding environment in the future. The Incitec containment cell is proposed to remain under the ownership of Incitec Fertilizers Limited.

Social Implications:

The Planning Proposal will result in a mix of land uses on a currently disused heavy industrial site. The areas of land to be rezoned for light industrial and commercial use have the potential to accommodate more jobs than were present on site at the peak of activity within the former smelter and fertilizer manufacturing plant.

The proposed residential areas will support additional population, which will have a positive economic impact on the neighbouring Boolaroo village centre. A combination of medium and standard density residential zones will facilitate housing diversity to cater for a range of needs and preferences.

The site has access to existing community facilities such as schools, and open space, and public transport, including buses and Cockle Creek train station.

Financial Implications:

There will be no specific financial implications for Council apart from use of staff resources in processing the draft Amendment.

Risk and Insurance Implications:

The preparation of a Planning Proposal to amend LMLEP 2004 is a regular Council activity governed by the provisions of the EP&A Act 1979 and the *Environmental Planning and Assessment Regulation 2000*. The level of risk associated with this activity is minimised by following the process outlined in the EP&A Act 1979 and Regulation.

Options:

1. Council resolves to send the Planning Proposal to the DoP and request a Gateway Determination. Council also resolves to place the Planning Proposal on public exhibition, subject to the outcome of the Gateway Determination. This is the recommended option.

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2. Council resolves that further information or amendments are required prior to sending the Planning Proposal to the DoP.

Conclusion:

A Local Environmental Study, and consultation with government agencies, has been completed to determine the most suitable land use zones for the former Pasminco and Incitec Pivot sites.

It is recommended that Council resolve to request a Gateway Determination from DoP to enable the Planning Proposal to progress.

Manager - Integrated Planning - Sharon Pope

Attachments:

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| 1. Planning Proposal - Pasminco Stage 2 and Incitec Pivot Site
Boolaroo | D01958422 |
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