

Planning Services

Gateway Determination Report

LGA	MidCoast
RPA	MidCoast Council
NAME	Rezoning of various lands
NUMBER	PP_2018_MCOAS_001_00
LEP TO BE AMENDED	Great Lakes Local Environmental Plan 2014
ADDRESS	Various
DESCRIPTION	Various
RECEIVED	23 January 2018 NB adequate on 2 March 2018
FILE NO.	OBJ17/08021
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The Planning Proposal is separated into 3 sections; A, B and C as described below;

- Rezone 12 sites, that council has purchased for the purpose of environmental protection to E1 National Park, E2 Environmental Conservation or E3 Environmental Management and amend the relevant Minimum Lot Size (MLS), Floor Space Ratio (FSR) and height controls (HOB).
- Realign the split zone boundary of lot 52 DP 08662 Macwood and Matthew Roads Smith Lakes to clarify the RU2 Rural Landscape and R5 Large Lot Residential (R5) zone application to an approved development.
- Rezone Lot 26 DP 1120907 Warrina Circuit Minimbah from R5 Large Lot Residential zone to E2 Environmental Conservation zone as it is a conservation lot.

Site Description and surrounding area

A. Council acquired land for conservation purposes

The land identified in this section is primarily wetlands and habitat corridors, lake systems and catchment areas. The sites have been identified through 2009 Great Lakes Water Quality Improvement Plan (WQIP)

The WQIP recommended acquisition or negotiated dedication of land adjacent to wetlands and foreshore areas of high ecological value, not otherwise identified as SEPP 14 wetlands or National Parks.

Sites

1. Minimbah Road, Nambiac – foreshore reserve

- A. Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation
- B. Proposed zoning from E3 Environmental Management to E2 Environmental Conservation.



2. Gereeba Island, Tuncurry on the Wallamba River

Proposed zoning from E3 Environmental Management to E2 Environmental Conservation



3. Wallamba Island, Tuncurry on the Wallamba River.

Proposed zoning from E3 Environmental Management to E2 Environmental Conservation



4A. The Southern Parkway, Forster

Proposed zoning from R3 Medium Density Residential to E2 Environmental Conservation.

MLS – 1,000m² to 40 hectares

FSR – 1:1 to 0.4:1

HOB – 12 metres to 8 metres



4B. The Southern Parkway, Forster

Proposed zoning from RE1 Public Recreation to E3 Environmental Management

MLS – not specified to 40 hectares

FSR – not specified to 0.4:1



4C. The Southern Parkway, Forster

Proposed zoning from R2 Low Density Residential to E3 Environmental Management

MLS – 450m² to 40 hectares

FSR – 0.5:1 to 0.4:1



5. Boral Road, Bulahdelah Lot 601 DP 1171576 land between the new Pacific Highway upgrade and the Myall River.

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation and E3 Environmental Management to E2 Environmental Conservation.



6. Darawank Close and The Lakes Way, Darawank

Proposed zoning from E2 Environmental Conservation to E1 National Parks and Nature Reserves; and
From RU2 Rural Landscape to E2 Environmental Conservation



7. Minimbah Road, Nabitac

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation



8. Failford Road, Failford

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation



9. 682 Aerodrome Road, Nabitac - Pt Minimbah Nature Reserve

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation; and from E3 Environmental Management to E2 Environmental Conservation



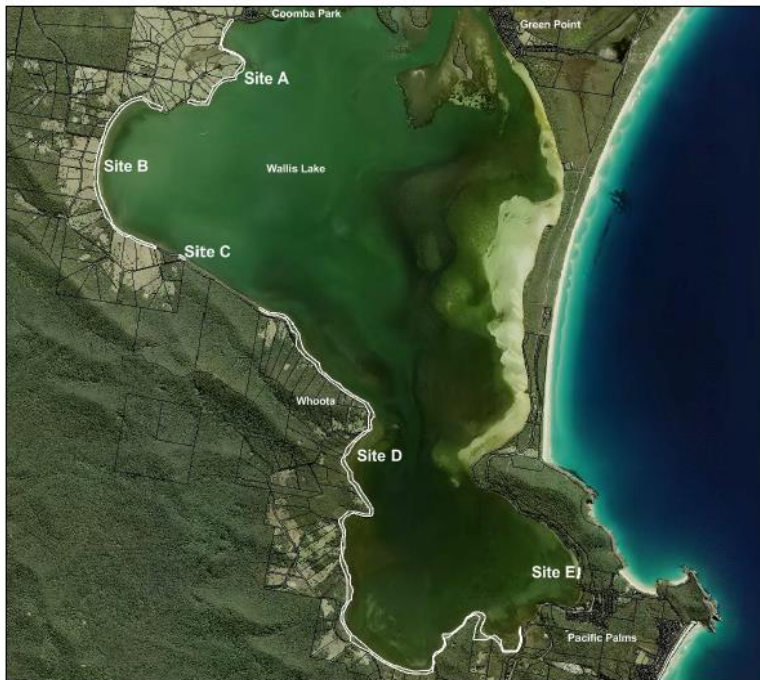
10. Lot 44 Manns Road, Darawank

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation



11. Coomba Park Foreshore reserve

Four (4) sites along the foreshore area from Coomba Bay to Pacific Palms
Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation



12. Locketts Crossing Road, Coolongolook (Wallingat River)

Proposed zoning from RU2 Rural Landscape to E2 Environmental Conservation



**B. Zone boundary re-alignment of Macwood Road and Matthew Road
Smiths Lake – Lot 52 DP 708662**

Section B of the Planning Proposal relates to the re-alignment of split zone boundary which will increase the R5 Large Lot Residential portion and reduce the RU2 Rural Landscape portion. The purpose of the realignment is to formalise an approved development on site and permit subdivision.

Macwood and Matthew roads, Smiths Lake



Combined existing and proposed zone boundary

Changes to land areas affected are;

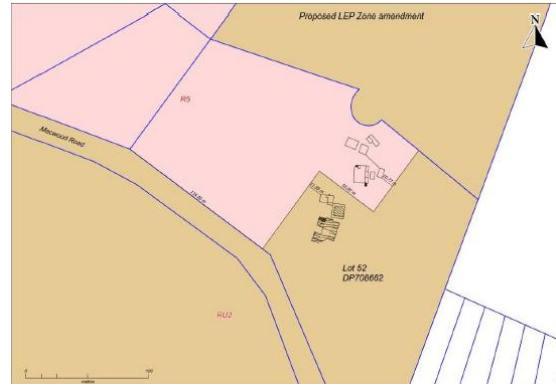
Area A - An area of approximately 2,280 square metres to be rezoned from RU2 Rural Landscape to R5 Large Lot Residential.

Area B - An area of approximately 1,850 square metres to be rezoned from R5 Large Lot Residential to RU2 Rural Landscape.

There is a slight increase of approximately 430 square metres of the R5 Zoned land.



Existing R5 zone



Proposed R5 zone

C. Rezoning Warrina Circuit Minimbah

14. Warrina Circuit, Minimbah

Proposed rezoning from R5 Large Lot Residential to E2 Environmental Conservation

MLS 1 hectare to 40 hectares

Total area: 71.16 hectare



Summary of Recommendation

The Planning Proposal should proceed with conditions because;

- Section A involves Council owned land purchased for the purpose of protecting the water quality of Midcoast lakes system
- Section B will align the land use zoning with the approved development on site;
- Section C clarifies through the planning system, the intended conservation of the land.

PROPOSAL

Objectives or Intended Outcomes

The objectives of the Planning Proposal are supported due to the conservation outcomes proposed. The Planning Proposal seeks to rezone land to reflect conservation values and amend relevant development controls where appropriate.

- A. **Council acquired land for conservation purposes** - ensure land purchased by Midcoast Council for conservation value and water quality is protected by an appropriate zone and future development is managed to protect the water quality of Wallis, Smith and Myall lakes.
- B. **Zone boundary re-alignment of Macwood Road and Matthew Road Smiths** - Align the land use zoning with the approved development on site
- C. **Rezone Warrina Circuit Minimbah** - Appropriately zone the site in accordance with its ecological value and past NSW L&E Court decision which proposed the site as an offset for the adjoining rural residential subdivision.

Explanation of Provisions

The provisions are appropriate for the objectives of the Planning Proposal.

- A. **Council acquired land for conservation purposes** – to rezone land to the preferred environmental protection zones through changes to the LEP maps and in some cases, the associated planning control maps such as HOB, MLS and FSR.
- B. **Zone boundary re-alignment of Macwood Road and Matthew Road Smiths** – amend the Land Zoning map to reflect the approved museum/gallery and café for tourism and visitor accommodation. The provisions will provide clarity over the land and permit future subdivision aligned with the development.
- C. **Rezoning Warrina Circuit Minimbah** – amend the land zoning map for the site from R5 Large Lot Residential zone to E2 Environmental Conservation zone. Also amend the MLS map from 1 hectares to 40 hectares which is consistent with the E2 Environmental Conservation zone.

Reclassification – many of the Council resolutions for items in Section A contain recommendations to classify the sites to community land and to add the acquired land to Council's Plan of Management. Others state the land is to be registered community land under the Local Government Act 1993. However, reclassification is **not** part of the Planning Proposal and will take place under a separate process under the *Local Government Act 1993*.

Mapping

The Planning Proposal entails amendments to LEP maps which includes changes to 5 land zoning map tiles. The Planning Proposal requires zone changes for 33 lots. The maps provided in the Planning Proposal clearly identify the sites, indicate the

current and proposed zones, development controls and are adequate for community consultation.

NEED FOR THE PLANNING PROPOSAL

- A. Council acquired land for conservation purposes** – The justification for the Planning Proposal comes from the Great Lakes Water Quality Improvement Plan (GLWQIP) and the Wallis Lake Wetlands Strategy (WLWS). The proposal responds to the conservation value of each site through appropriate zoning is an appropriate planning solution. The proposal seeks to rezone public lands to the highest possible environmental protection. In areas where a broader range of land uses is required, an E3 Environmental Management zone is proposed.

Acquisition – many of the parcels in Section A were purchased under NSW Catchment Management Authority grant funds and others were acquired by compulsory acquisition under the *Just Terms and Compensation Act 1991*. A group of the sites (8 parcels) came into Council's ownership through the exhibition of the Comprehensive LEP and these are already classified Community Land. Rezoning of these sites to environmental zones should not cause community concern due to the public process involved in acquiring the land. No additional acquisition is involved.

- B. Zone boundary re-alignment Macwood Road and Matthew Road Smiths**
The proposed amendment is not the result of a study but is the consequence of a submission to the standard instrument conversion of Great Lakes LEP 2014. Council's assessment has found the request to be valid and this position is supported.

- C. Rezoning Warrina Circuit Minimbah** – the property has high ecological values including threatened biodiversity and regionally significant native vegetation. The site has a history of illegal clearing associated with a development application for subdivision of the adjoining rural residential subdivision of Warrina Circuit and a connected *SEPP 46 Protection and Management of Native Vegetation* (repealed 1997) application.

As a result of the illegal clearing, the NSW Land & Environment Court in its judgement recognised that the landowner had entered into a property agreement with the Director General of the DLWC under Part 5 of the Native Vegetation Act in relation to land to be retained for conservation purposes.

The land is currently secured via an 88B instrument. It is considered that the Great Lakes LEP 2014 E2 Environmental Conservation zoning of the site best reflects the land's ecological status.

STRATEGIC ASSESSMENT

State/Regional / District

The Planning Proposal is consistent with the *Hunter Regional Plan 2036*.

PP		Direction 14 – Protect and connect natural areas	Direction 15 – Sustain water quality and security
Sec A	Council acquired land for conservation purposes	The sites are part of the Barrington to Myall Lake link. Consistency with appropriate conservation planning will protect landscape scale connections through measures such as land use planning.	Consistency with Action 15.4 Implement catchment-based plans for the ongoing sustainable management and health of estuaries. Zoning these lands conservation will assist in applying the neutral or beneficial water quality objectives to land use planning to minimise effects on watercourses and wetlands.
Sec B	Zone boundary re-alignment Macwood Road and Matthew Road Smiths	Aligns with the Regional priorities for Midcoast Council area by supporting the visitor economy by leveraging the natural beauty of the area and enhancing nature based tourism infrastructure.	
Sec C	Rezoning Warrina Circuit Minimbah	Consistency with Direction 14 by identifying terrestrial biodiversity values and protect areas of high environmental value. The Planning Proposal will implement appropriate measures to conserve validated high environmental value areas	

Section 9.1(2) Ministerial Directions

Tab A – Site summary table contains a tabulated form of inconsistencies with the Ministerial Directions for specific sites.

Section 9.1(2) discussion in detail;

1.2 Rural zones

Sections A and B

The Planning Proposal is inconsistent with clause 4(a) as it will zone land from a rural zone to an environmental zone (Section A) and residential zone at Macwood and Matthew roads, Smiths Lake (Section B). The inconsistency is justified in accordance with 6(d) as it is of minor significance as the Planning Proposal will appropriately zone vegetated land and formalise an existing approved use adjacent to an existing residential zone. **The approval of the Minister's delegate is required for this inconsistency.**

1.3 Mining, Petroleum Production and Extractive Industries

Sections A and B

The Planning Proposal is inconsistent with clause 4(a) as it will zone land from a rural zone to an Environmental Protection zone. Under SEPP (Mining, Petroleum and Extractive Industries) 2007 mining and petroleum production may be carried out on land where agriculture may be carried out with or without development consent. The DG of the Department of Primary Industries (DPI) must be consulted in accordance clause 4 and 5. **The Planning Proposal may be inconsistent with Direction 1.3 where support from the DPI can be demonstrated to the Minister's delegate. Consultation is required to confirm this support.**

2.3 Heritage Conservation

The Planning Proposal considers that Aboriginal Cultural Heritage matters are not applicable to Section A, B and C. Sections A and C do not propose development of any kind but rather propose conservation of land owned by Council and a private landowner. Referral to the Local Aboriginal Land Council is not required.

It is considered that Section B, Rezoning Warrina Circuit Minimbah, may be inconsistent with Direction 2.3. Although Aboriginal Cultural Heritage is a consideration through the development application process, this does not negate the requirements of the Minister's Direction. **Consultation is required with OEH and the Local Aboriginal Land Council to determine if there is an inconsistency.**

3.1 Residential zone

The Planning Proposal is inconsistent with Direction 3.1 as there are a number of instances where the proposal will restrict the provision of housing and narrow housing choice through applying an environmental zone or the RU2 zone.

Section A

The inconsistency is justified in accordance with 6(d) as it is of minor significance as the subject sites are heavily vegetated and perform an important role in protecting water quality. These parcels would require a high degree of justification to gain development approval for residential development. **The approval of the Minister's delegate is required for this inconsistency.**

Section B

The inconsistency is justified in accordance with 6(d) as it is of minor significance as the Planning Proposal will zone more land to residential than it will zone to RU2 (1,850m² to RU2 and 2,280m² to R5 zone). **The approval of the Minister's delegate is required for this inconsistency.**

4.4 Planning for Bushfire Protection

The Planning Proposal affects land mapped as bushfire prone and **consultation with NSW RFS must occur** and consider any comments prior to undertaking community consultation.

6.2 Reserving Land for Public Purposes

Section A

The planning Proposal is inconsistent with clause (4) as it will alter and reduce reservations of land for public purposes by zoning land at Lot 6179 The Southern Parkway Forster. The inconsistency is justified in accordance with 8(b) as it is of minor significance. The Planning Proposal is heavily vegetated and will contribute to Council's objective to protect land for drainage and flooding purposes. **The approval of the Minister's delegate is required for this inconsistency.**

State Environmental Planning Policies

SEPP (Exempt and Complying Development Codes) 2008 – the Planning Proposal is contrary to the aims of the Policy as it restricts opportunity for exempt and complying development. However, the Planning Proposal does so for the purpose of environmental protection which reflects the values of the subject sites.

SITE SPECIFIC ASSESSMENT

Social

There are social benefits in conserving land for environmental protection. The outcomes of Section A will protect the water quality of the coastal lake system and support biodiversity conservation for threatened and migratory species and the community will benefit from improvements to aquatic health and abundance.

Environmental

There will be environmental benefits from the Planning Proposal outcome by protecting vegetation and water quality.

Section A: Council acquired land for conservation purposes

The Planning Proposal is based on the *Great Lakes Water Quality Improvement Plan* (WQIP) 2009 which seeks to improve the water quality of Wallis, Smith and Myall Lakes by protecting wetlands. The Plan identifies the best mechanisms to manage activities to reduce key pollutant loads. The Plan identifies the national and regional importance of the lake system building on the previous work through the Coastal Catchments Initiatives (2005) to identify specific levels of nutrients and sediments required for a healthy lake ecology and recommends the acquisition of wetlands.

The Planning Proposal also relies on the *Wallis Lake Wetlands Strategy* (WLWS) which recommends that council and agencies strategically and in partnership acquire and transfer ownership to the public conservation estate through direct acquisition, acceptance of dedication and development agreements

Economic

Section A: Council acquired land for conservation purposes

Financial costs associated with acquisition of the land need to be measured against the value of remediating and ongoing protection of the wetland system. Over the long term, the cost of repair and remediation of wetland function is less than the economic burden and loss of damaged or degraded wetland. Investment in the remediation of wetland is repaid through improvements to aquatic breeding grounds and has positive consequences for tourism and primary industries.

Section B: Zone boundary re-alignment Macwood Road and Matthew Road Smiths

The proposed boundary realignment will provide the approved development with more economic certainty and the development application for tourist accommodation is more likely to proceed.

Section C: Rezoning Warrina Circuit Minimbah

Zoning the land to E2 Environmental Conservation is consistent with the 88B Instrument on the land title which does not permit development over the land.

Infrastructure

No infrastructure associated with this planning proposal.

CONSULTATION

Community

Council has proposed an exhibition of 28 days and this is considered appropriate given the number of properties involved.

Agencies

Consultation is required with the following Government agencies;

- NSW Office of Environment and Heritage – for environmental issues and for Aboriginal Cultural Heritage issues for Section B of the Planning Proposal.
 - NSW Rural Fire Service
 - Local Aboriginal Land Councils for Section B of the Planning Proposal.
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TIMEFRAME

Council proposes to finish within 11 months however given the resources required for mapping and community consultation a 12-month timeframe is recommended.

LOCAL PLAN-MAKING AUTHORITY

Council has requested delegations despite it involving the zoning of council lands. It is considered appropriate for council, in this instance, be given delegations to finalise the Planning Proposal given that the proposed rezonings are non-entrepreneurial

and have been subject to community consultation through the acquisition of land for public purposes.

Delegations for sections B and C is appropriate because they consist of privately owned land and;

- Section B is the result of a submission to Council from the landowner
- Section C has gone through a lengthy process of court cases and compliance matters in relation to illegal clearing but the land owner has willingly permitted the land to be zoned for conservation.

CONCLUSION

Preparation of the Planning Proposal is supported to proceed with conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree any inconsistencies with Section 9.1 Directions 1.2 Rural Zones, 3.1 Residential Zones and 6.2 Reserving Land for Public Purposes are minor or justified; and
2. Note that the consistency with Section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection are unresolved and will require justification/consultation.
3. Consult with Secretary of the Department of Primary Industries (DPI) regarding Direction 1.3 Mining Petroleum and Extractive Industries clauses 3(a) and (b) and provide the Secretary of Department of Planning & Environment with any objection and supporting information before undertaking community consultation and demonstrate that the inconsistency is of minor significance.

It is recommended that the delegate of the Minister for Planning, determine that the Planning Proposal should proceed subject to the following conditions:

1. The Planning Proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities under section 3.34 of the EP&A Act and/or to comply with the requirements of relevant Section 9.1 Directions:
 - NSW Rural Fire Service (S9.1 Direction 4.4)
 - Office of Environment and Heritage for;
 - Biodiversity
 - Aboriginal Cultural Heritage
3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

4. Given the nature of the Planning Proposal, Council should be authorised to exercise delegation to make this plan



23/3/2018

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