NSW GOVERNMENT | Planning

Planning Team Report

Amendment 66 - Lake Macquarie LEP 2004 – 667 Pacific Highway & 31 Alick St, Belmont

Proposal Title :	**Amendment 66 - Lake Macquarie LEP 2004 – 667 Pacific Highway & 31 Alick St, Belmont**
Proposal Summary :	**This Planning Proposal aims to rezone land at 667 Pacific Highway and 31 Alick Street Belmont from Zone 6(2) Tourism and Recreation Zone to Zone 2(1) Residential Zone to rectify an historical zoning anomaly to enable the continued use of the site for residential purposes.**
PP Number :	**PP_2012_LAKEM_003_00**
Dop File No :	**12/03616**

Proposal Details

Date Planning Proposal Received :	**08-Mar-2012**	LGA covered :	**Lake Macquarie**
Region :	**Hunter**	RPA :	**Lake Macquarie City Council**
State Electorate :	**LAKE MACQUARIE**	Section of the Act :	**55 - Planning Proposal**
LEP Type :	**Spot Rezoning**		

Location Details

Street :	**667 Pacific Highway & 17 Alick Street**				
Suburb :		City :	**Belmont**	Postcode :	**2280**
Land Parcel :	**Lot 4 DP 660358 & Lots 1 & 2 SP 77782 Zone 6(2) Tourism and Recreation Zone**				

DoP Planning Officer Contact Details

Contact Name :	**Susan Blake**
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RPA Contact Details

Contact Name :	**Grant Alderson**
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DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

Land Release Data

Growth Centre :	**N/A**	Release Area Name :	**N/A**
Regional / Sub Regional Strategy :	**Lower Hunter Regional Strategy**	Consistent with Strategy :	**Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	**Residential**
No. of Lots :	**3**	No. of Dwellings (where relevant) :	**3**
Gross Floor Area :	**0**	No of Jobs Created :	**0**

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Council notes in the Planning Proposal that the rezoning was commenced as draft Amendment No.43 to LM LEP 2004, however the plan was not completed, and in 2010 was not transitioned under the new plan making provisions of the EP&A Act. Consequently Council has recommenced the process by submitting a new Planning Proposal.**

Council resolved at its City Strategy Committee Meeting on 30 January 2012 to send the Planning Proposal to the Department of Planning & Infrastructure requesting a Gateway Determination to enable amendments to Lake Macquarie LEP 2004 pursuant to section 54 of the EP&A Act 1979.

Additional information was requested from Council on 22 February 2012 to complete the adequacy assessment. Council responded on 8 March 2012.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives satisfactorily outlines the intended outcomes of the Planning Proposal (PP) ie. to rezone land at 667 Pacific Highway & 31 Alick Street, Belmont, to enable residential uses to continue.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The Proposal aims to amend the Lake Macquarie LEP 2004 (LM LEP 2004) by rezoning land from Zone 6(2) Tourism and Recreation Zone to Zone 2(1) Residential Zone.**

Due to the timing of Council's principal LEP being exhibited soon, this planning proposal is to proceed as both an amendment to the current Lake Macquarie LEP 2004 and to the draft principal LEP 2012. All exhibition material, including maps (ie. Height of Buildings, Minimum Lots Size and Zoning), should be prepared to clearly identify to the community how the planning proposal will amend both instruments. Council should liaise further with

the Department's Regional Team in relation to the material that should be prepared and placed on exhibition prior to proceeding to exhibition.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified? **SEPP No 71—Coastal Protection**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Council has provided the following maps:**
*** Locality Plan**
*** Aerial & Current Zoning Map**
*** Historic Zoning under LM LEP 1984**
*** Proposed Zones under LM LEP 2004**
*** Proposed Zones under the Standard Instrument LEP**
*** Proposed Minimum Lot Size Map & Proposed Maximum Building Height Map under the Standard Instrument LEP.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Council has proposed 14 days for public consultation. Given the minor nature of the amendment, a 14 day consultation period is considered appropriate.**

Council has recommended an extensive list of public agencies to be consulted as part of the PP. It is considered that due to the low impact nature of the proposal, Council need not consult with all these agencies.

The Gateway will determine community consultation requirements under s.56(2)(c) and 57 of the EP&A Act.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : **The Director General requires consideration of relevant s117 Directions for Plan Making & State Environmental Planning Policies. The following s117 Directions are directly applicable to the PP:**

2.2 Coastal Protection
In accordance with cl.3 this s117 Direction applies as the land is located within the coastal zone. It is considered that this PP is consistent with the provisions of the Directions as under cl.4, the NSW Coastal Policy, the Coastal Design Guidelines and relevant provisions of s733 of the Local Government Act 1993.

3.1 Residential Zones
The PP seeks to create additional residential land. In accordance with the objectives and cl. 4 and 5, the PP includes provisions that are consistent with the s117 Direction.

4.1 Acid Sulfate Soils
Under cl.6, a planning authority must not prepare a PP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) on the ASS maps unless the planning authority has considered an ASS study assessing appropriateness of the change of land use given the presence of ASS. As the site is already utilised for an urban purpose, has residential buildings constructed on the site, and the LM LEP 2004 has provisions to ensure that future development of the site avoids any significant impacts from ASS, in accordance with cl. 8(b) of this s117 Direction, the DG (or delegate) may agree that the provisions of the PP that are inconsistent with the terms of the s117 Direction are of minor significance.

4.3 Flood Prone Land
Under cl. 3 the s117 Direction applies when the relevant planning authority prepares a PP that creates, removes or alters a zone or provision that affects flood prone land. In accordance with cl.4 a PP must include provisions that give effect to, and are consistent with the NSW Flood Prone Land Policy and principles of the Floodplain Development Manual 2005 (including the Guidelines on Development Controls on Low Risk Areas).

Council has prepared the draft Lake Macquarie Waterway Flood Risk Study and Management Plan. This plan has been prepared in accordance with the above Guidelines, and considers the predicted sea level rise of 0.91m by 2100 in the locality. Based on the findings of the draft study and plan, Council is currently considering a range of proposed flood hazard levels. Council's assessment of the PP indicates that the subject lands are not anticipated to be located within the proposed 'high lake hazard area', however parts of the land including the existing dwelling at 31 Alick Street are likely to be located within the proposed 'high' to 'low' 'flooding hazard area' and subject to flooding. The subject lands have existing residential dwellings located on site, and the rezoning will not result in the intensification of development on these sites, nor remove the requirements that future development must comply with flood planning controls.

Consequently, the DG may consider that the provisions of the PP that are inconsistent, are in accordance with cl.6(b) justified by a study prepared in support of the PP which gives consideration to the objective of this direction, or cl. 6(d) are of minor significance.

4.4 Planning for Bushfire Protection
The subject land is identified as Bushfire Prone Land. Although consultation was undertaken with the RFS in December 2008, due to the time delay, and in accordance with cl.4 and 7 of the s117 Direction, to enable examination of the consistency with this Direction, the Council must re-consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway Determination.

5.1 Implementation of Regional Strategies
The PP is consistent with the s117 Direction as it is consistent with the endorsed Lower Hunter Regional Strategy.

s117 Directions 2.1, 2.3, 2.4, 3.2, 3.3, 3.4, 4.2, 6.1 and 6.2 also have limited application to this PP and it is considered that there are no inconsistencies with these Directions.

The following SEPP is applicable to the PP and has been addressed in the PP.

SEPP 71 – Coastal Protection
In accordance with cl.2, the policy aims to provide: public access along the coastal

foreshore; ensure suitability of development given its type, location, and design in relation with the surrounding area; reduce detrimental impacts including as a result of overshadowing or loss of scenic qualities, or impacts from coastal processes and hazards; to conserve animals and marine vegetation and habitats, and wildlife corridors; and protect cultural places, values and customs, heritage and archaeologically significant sites and items. As per cl.7 matters set out in cl.8 should be taken into account by Council when preparing a draft LEP that applies to the land.

Council has indicated that the PP has no significant impacts on the coastal zone, and as the subject lands do not have access to the coastal foreshore, will not adversely impact the existing use of the site, the beach environment, or coastal management strategies. The PP is therefore consistent with the aims and objectives of the SEPP.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Sufficient information has been provided to assess the proposal in preparation of the Gateway Determination.**

Proposal Assessment

Principal LEP:

Due Date : **December 2012**

Comments in relation to Principal LEP : **Council is presently reviewing several conditions of the s.65 certificate and it is expected that Council will resubmit a revised LEP and s.64 submission, being draft Lake Macquarie LEP 2011. Consequently, this PP may occur prior to the implementation of the Principal Plan.**

Assessment Criteria

Need for planning proposal : **Council resolved on 30 January 2012 to prepare a draft amendment to LM LEP 2004 to rezone land at 667 Pacific Highway and 31 Alick Street Belmont from Zone 6(2) Tourism and Recreation Zone to Zone 2(1) Residential Zone to rectify an historical zoning anomaly to enable the continued use of the site for residential purposes.**

Under the Northumberland County District Planning Scheme 1960 the land was zoned 2(a) Residential Zone. When the Lake Macquarie LEP 1984 replaced the Northumberland Scheme the land zone was changed to 3(b) Special Business along with the adjacent squash courts; but a residential zone was maintained for all dwellings located south of the subject lands. The preparation of LEP 2004 resulted in the zone being converted to the present Zone 6(2) Tourism and Recreation Zone.

Council investigations concluded that the subject land had historically been erroneously zoned when converted from the Northumberland County District Planning Scheme to the LEP 1984 and then subsequently converted in the LEP 2004. Council has therefore resolved to rectify the historically error and rezone the land to Zone 2(1) Residential Zone to reflect the existing use on the site.

Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)
The subject land is too small to be identified within the LHRS. However the LHRS seeks to facilitate opportunities for housing to be provided within the existing urban areas. The subject lands presently have residential dwellings constructed on the site, and adjoin an existing residential area with adequate services and infrastructure. The proposed rezoning is therefore consistent with the objectives and outcomes of the LHRS.

Lake Macquarie City Council Lifestyle Strategy 2020
This strategy provides the long term direction for the overall development of the LGA, and is a tool for managing private and public development in Lake Macquarie. The PP is consistent with the goals of the Strategy.

Environmental social economic impacts : **The proposed residential development will rectify an error in zone boundaries. There are existing dwellings on the site, and link with the existing adjacent residential infrastructure.**

It should be noted that the subject lands as identified within the Lake Macquarie Waterway Floor Risk Study and Management Plan are located within a high to low flood hazard area. Any future development will require consideration of this matter.

Assessment Process

Proposal type :	**Routine**	Community Consultation Period :	**14 Days**
Timeframe to make LEP :	**6 Month**	Delegation :	**DG**
Public Authority Consultation - 56(2)(d) :	**NSW Rural Fire Service**		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning_Proposal_draft_Amendment_No_66_being_667_Pacific_Highway_&_31_Alick_Street_Blemont.pdf	**Proposal**	**Yes**

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **4.1 Acid Sulfate Soils**
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection

Additional Information : **It is recommended that:**

1. Support the Planning Proposal.

2. Due to the timing of Council's principal LEP being exhibited soon, this planning proposal is to proceed as both an amendment to the current Lake Macquarie LEP 2004 and to the draft principal LEP 2012. All exhibition material, including maps (ie. Height of Buildings, Minimum Lots Size and Zoning), should be prepared to clearly identify to the community how the planning proposal will amend both instruments. Council should liaise further with the Department's Regional Team in relation to the material that should be prepared and placed on exhibition prior to proceeding to exhibition.

3 . Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:
(a) the Planning Proposal be made publicly available for 14 days;
(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009)

4. Consultation is required with the following public authority under section 56(2)(d) of the EP&A Act:
* NSW Rural Fire Service

The public authority is to be provided with a copy of the planning proposal and any relevant supporting material. The public authority is to be given at least 21 days to comment on the proposal, to to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

5. The Director General's delegate may agree that the planning proposal's inconsistencies with s117 Directions -
4.1 Acid Sulfate Soils, as the provisions of the PP that are inconsistent are in accordance with cl. 8(b) are of minor significance, and
4.3 Flood Prone Land, as under cl. 9(a) the Planning Proposal has considered the draft Lake Macquarie Waterway Flood Risk Study and Management Plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, and as the subject lands have existing residential dwellings located on the site, and any future development will need to consider these flood prone land requirements, under cl. 9(b) the inconsistencies are considered of minor significance.
Consequently, if the Director General agrees to these inconsistencies, no further approval will be required in relation to the s117 Directions.

6. In relation to s117 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the Commissioner of the NSW Rural Fire Service and amend the planning proposal (if necessary) to take into consideration any comments prior to undertaking exhibition of the planning proposal.

7. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP& A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

7. The time frame for completing the LEP is 6 months from the date of the Gateway Determination.

Supporting Reasons : This PP is a minor amendment which rectifies an historical zoning error. The site is presently used for residential purposes with dwellings constructed on the subject land. The subject land adjoins an existing established residential zone.

Amendment 66 - Lake Macquarie LEP 2004 – 667 Pacific Highway & 31 Alick St, Belmont

Signature: Monica Gibson

Printed Name: Monica Gibson Date: 13/3/2012