

Planning Proposal

Draft Amendment No. 66 to Lake Macquarie Local Environmental Plan 2004 – 667 Pacific Highway and 31 Alick Street, Belmont

Local Government Area	Lake Macquarie City
Name of LEP:	Draft Amendment No. 66 to Lake Macquarie Local Environmental Plan 2004
Maps:	Appendix 1 – Locality Map Appendix 2 – Existing zoning under LMLEP 2004 and aerial photograph Appendix 3 – Zoning under LMLEP 1984 Appendix 4 – Proposed zoning for LMLEP 2004 Appendix 5 – Proposed zoning under Council's draft Standard Instrument LEP Appendix 6 – Proposed lot size map under Council's draft Standard Instrument LEP Appendix 7 – Proposed height map under Council's draft Standard Instrument LEP
Additional information:	Appendix 8 – Copy of Council resolution and report 30 January 2012 Appendix 9 – Summary of response to SEPP 71 clause 8 Matters for consideration Appendix 10 – Summary of response to S.117 Direction 4.3 Flood Prone Land Appendix 11 – Planning Proposal compliance with <i>Draft Lake Macquarie Waterway Flood Risk Study and Management Plan</i> Appendix 12 – NSW Rural Fire Service Consultation

Part 1 – Objective of the Planning Proposal

The objective of the Planning Proposal is to amend Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to rezone 667 Pacific Highway, Belmont, and 31 Alick Street, Belmont from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone to rectify an historical zoning anomaly and to enable the continued use of the site for residential purposes.

Part 2 – Explanation of the Provisions

The Planning Proposal would result in the following changes to LMLEP 2004:

Amendment Applies To	Explanation of the Provision
LMLEP 2004 - Maps	Change the land use zone for 667 Pacific Highway, Belmont, and 31 Alick Street, Belmont, from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone. Refer to Appendix 4
Dictionary	Amend the definition of <i>the map</i> by adding Lake Macquarie Local Environmental Plan 2004 (Amendment No 66)

The Planning Proposal would result in the following changes to Council's standard instrument LEP:

Amendment Applies To	Explanation of the Provision
Zoning Map	Land to be zoned 2(1) Residential Zone under LMLEP 2004 would be zoned R2 Low Density Residential. Refer to Appendix 5.
Lot size map	Lot size map minimum lot sizes would correspond to proposed zoning as follows: R2 – 450m ² . Refer to Appendix 6.
Height map	Height of buildings map maximum building heights would correspond to proposed zoning as follows: R2 – 8.5m. Refer to Appendix 7

Part 3 – Justification for the Provisions

A. Need for the planning proposal

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

This Planning Proposal is the result of a Council investigation in 2006. The investigation identified that the subject lands Lot 4, DP 660358, 667 Pacific Highway, Belmont, and Lots 1 and 2, SP 77782, 17 Alick Street, Belmont, were erroneously zoned for the purpose of a non-residential land use, and that a residential land use zoning is the most appropriate zoning for the historical and current use of the land. Council resolved on 21 April 2008 to rectify the zoning anomaly by rezoning the subject lands under the former plan-making provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act). The rezoning process commenced as draft amendment No. 43 to LMLEP 2004, however, was never completed prior to the new plan making provisions of the EP&A Act coming into force.

During 2011 Council officers identified that rezoning of the subject lands had not been completed and could not continue to be progressed under the former plan-making provisions of the EP&A Act. In order to rectify the zoning anomaly a new rezoning process had to be initiated under the new plan making provisions of the EP&A Act. Council resolved to initiate a new rezoning process on 30 January 2012. A copy of the Council report and resolution is provided in Appendix 8 and a summary of the original Council investigation relating to the subject lands is provided below.

Summary of Council investigations

On 30 May 2006, Council received initial enquiries relating to the zoning of 667 Pacific Highway. Council confirmed that 667 Pacific Highway was zoned 6(2) Tourism and

Recreation Zone under LMLEP 2004 and that development consisted of a residential dwelling house. The site warranted further investigation as residential development is not permitted within the 6(2) Tourism and Recreation Zone under LMLEP 2004. Further investigation identified that 31 Alick Street was also zoned 6(2) Tourism and Recreation Zone under LMLEP 2004 and was also being used for residential purposes (an attached dual occupancy). The subject lands were also identified as being located adjacent to:

- a private recreation facility (a squash court in 2006 and currently a gym) built on land zoned 6(2) Tourism and Recreation Zone under LMLEP 2004; and
- residential housing built on land zoned 2(1) Residential Zone under LMLEP 2004 (Refer to Appendix 2 for an aerial photograph and zoning information).

A review of historical records and aerial photographs identified that the construction of residential development on the subject lands dated back to the 1960's. The dwelling house at 667 Pacific Highway was constructed prior to 1965. The attached dual occupancy at 31 Alick Street was constructed in 2006, however, was a rebuild to replace a multiple dwelling housing development that had been constructed between 1965 and 1979 but was destroyed by fire in 2003.

A review of the historical zoning records revealed that the subject lands were zoned for the purposes of residential development at the time of initial development. Specifically, the subject lands were zoned 2(a) Residential Zone under Northumberland County District Planning Scheme 1960 (NCDPS 1960). However, an error with the zoning of the subject lands under subsequent planning instruments was identified. The Lake Macquarie Local Environmental Plan 1984 (LMLEP 1984), which replaced NCDPS 1960, changed the zoning of the subject lands to 3(b) Special Business along with the adjacent private recreation facility. However, the residential zoning for the adjacent residential development was maintained. No justification for the zoning change was identified and the change was attributed to a drafting error during the preparation of the zoning maps. (Refer to Appendix 3 for an extract of the LMLEP 1984 zoning map). LMLEP 2004, which replaced LMLEP 1984, retained the error with the 3(b) Special Business Zone being converted to 6(2) Tourism and Recreation Zone. (Refer to Appendix 2 for an extract of the LMLEP 2004 zoning map).

As part of the investigation, the owner of the adjacent private recreation facility was consulted to ascertain their intentions in regards to the expansion of the facility onto the subject lands at a future date. The owner advised they had no such intentions. However, the owner expressed an interest in rezoning the land occupied by the private recreation facility from 6(2) Tourism and Recreation Zone to 2(2) Residential (Urban Living) Zone. The proposal was assessed by Council's Rezoning Appraisal and Prioritisation Panel as having no strategic merit.

Council investigations concluded that the subject lands had been erroneously zoned 3(b) Special Business under LMLEP 1984 and then subsequently zoned 6(2) Tourism and Recreation Zone under LMLEP 2004. It was considered that a 2(1) Residential Zone under LMLEP 2004 was the most appropriate land use zone considering the current and historical residential uses of the subject lands. Subsequently, rezoning the subject lands to 2(1) Residential was recommended.

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

The Planning Proposal to rezone the subject lands is the best means to achieve the objective of rectifying the historical zoning anomaly and enabling the continued residential use of the lands. The subject lands were erroneously zoned 6(2) Tourism and Recreation Zone when LMLEP 2004 was prepared and it is considered that a 2(1) Residential Zone is more suited to the historical and current use of the land. No other avenues have been identified to rectify the historical zoning anomaly.

3. Is there a net community benefit?

The positive community benefits associated with implementing the Planning Proposal include:

- rectifying an historical zoning error to ensure LMLEP 2004 correctly and accurately reflects an appropriate land use zone for the subject lands;
- ensuring the historical zoning error is not transferred to Council's standard instrument LEP; and
- ensuring the zoning error will not impact the private owners of the subject lands in the future (Note: the subject lands consist of existing residential development which is not permitted in the 6(2) Tourism and Recreation Zone).

No negative impacts on the community have been identified as a result of the Planning Proposal. Importantly, the Planning Proposal will not result in the loss of any existing tourism or recreational uses within the community as the subject lands have been erroneously zoned 6(2) Tourism and Recreation Zone, and the historical and current land uses are residential.

B. Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Lower Hunter Regional Strategy seeks to facilitate greater opportunities for housing to be provided within the existing urban areas. The subject lands consists of existing residential development within an established residential area with adequate services and infrastructure. Therefore, it is considered that the Planning Proposal is consistent with the objectives of the Lower Hunter Regional Strategy.

5. Is the planning proposal consistent with the local council's Community Strategic plan, or other local strategic plan?

The Planning Proposal is consistent with the aims and objectives of Council's Lifestyle 2020 Strategy. The subject lands are located within an identified urban area and are close to the Belmont town centre. The lands are compatible with surrounding land use which is predominately low-density residential. Furthermore, the subject lands are currently being utilised for residential purposes.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with the relevant State Environmental Planning Policies (SEPP) as detailed below:

SEPP	Objective	Findings
SEPP 71 – Coastal Protection	This SEPP ensures that development in the NSW coastal zone is appropriate and suitably located to ensure that there is a consistent and strategic approach to coastal planning and management.	Consistent: The subject lands are within the Coastal Zone as defined on the Coastal Zone Maps for Lake Macquarie. No significant impacts on the coastal zone are anticipated and the Planning Proposal is consistent with the matters for consideration identified in clause 8 of SEPP 71 as detailed in Appendix 9.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with the following relevant Ministerial Directions except Direction 4.3 – Flood Prone Land. Justification for this inconsistency is provided in the table below. Concurrence from the Director General will need to be granted for this inconsistency.

Ministerial Direction	Objective	Findings
2.1 – Environmental Protection Zones	The direction requires that a draft LEP contain provisions to facilitate the protection of environmentally sensitive land.	Consistent: As the Planning Proposal will rectify a zoning anomaly within an existing residential area, it will not have a detrimental impact on the environment within the locality. This Planning Proposal is not proposing to alter the current provisions in LMLEP 2004 that facilitate the protection of environmentally sensitive areas.
2.2 – Coastal Protection	The direction requires a draft LEP to include provisions that give effect to, and are consistent with the NSW Coastal Policy, Coastal Design Guidelines, & the NSW Coastal Management Manual, where the draft LEP applies to land in the coastal zone.	Consistent: The Planning Proposal relates to land that is in the coastal zone. The Planning Proposal will not alter any provisions relating to the coastal zone currently within LMLEP 2004. The Planning Proposal is consistent with the NSW Coastline Management Manual 1990, the NSW Coastal Policy 1997, and the Coastal Design Guidelines 2003. <u>Note:</u> Sea level rise implications for the subject lands have been addressed as part of Ministerial Direction 4.3 Flood Prone Land.
2.3 – Heritage Conservation	The direction requires that a draft LEP include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	Consistent: The Planning Proposal is not within the vicinity of any item or area of local, regional, or state significance.
2.4 – Recreation Vehicle Areas	The direction restricts a draft LEP from enabling land to be developed for a recreation vehicle area.	Consistent: The Planning Proposal will not propose a recreation vehicle area.
3.1 – Residential Zones	The direction requires a draft LEP to include provisions that encourage the provision of housing and ensure that residential land is adequately serviced.	Consistent: The Planning Proposal will rectify an anomaly in the land use zoning applied to the subject lands. The subject lands are serviced by reticulated water, electricity and sewer.
3.2 – Caravan Parks and Manufactured Home Estates	The direction requires a draft LEP to maintain provisions and land use zones that allow the establishment of Caravan Parks and Manufactured Home Estates.	Consistent: The Planning Proposal will not affect provisions relating to Caravan Parks or Manufactured Home Estates.

3.3 – Home Occupations	The direction requires that a draft LEP include provisions to ensure that Home Occupations are permissible without consent.	Consistent: The Planning Proposal will not affect provisions relating to home occupations, and will retain the provisions of the principal LEP in this regard.
3.4 – Integrating Land Use and Transport	The direction requires consistency with State policy in terms of positioning of urban land use zones.	Consistent: The Planning Proposal will rectify an anomaly in the land use zoning applied to the subject lands. The lands are close to Belmont Town Centre and has access to public transport.
4.1 – Acid Sulfate Soils	The direction applies to land that has been identified as having a probability of containing acid sulfate soils, and requires that a draft LEP is consistent with the Acid Sulfate Soil component of the model Local Environmental Plan (ASS model LEP), or be supported by an environmental study.	Consistent: Part of the subject land has the potential for Class 2 and 3 Acid Sulfate Soils. However, as the Planning Proposal relates to clarifying an established land use for the site, no further investigations in regards to Acid Sulfate Soils are required.
4.2 – Mine Subsidence and Unstable Land	The direction aims to ensure that development is appropriate for the potential level of subsidence. The direction applies to land within a Mine Subsidence District and requires consultation with the Mine Subsidence Board.	Consistent: The Planning Proposal is not located within a Mine Subsidence District.
4.3 – Flood Prone Land	The direction applies to flood prone land, and requires the consideration of potential flood impacts on and off the subject land.	Inconsistent: Parts of the subject lands are flood prone. The Planning Proposal is consistent with the direction, except in relation to clause 4.3(5) as it proposes to rezone land from a recreation zone to a residential zone (refer to Appendix 10 for details). Justification for inconsistency: As per clause 4.3(9)(a) of the direction, a Planning Proposal may be inconsistent with this direction if the Director-General is satisfied that the Planning Proposal is in accordance with a floodplain risk management plan that has been prepared according to the <i>NSW Floodplain Development Manual</i>. The Planning Proposal is considered to be in accordance with such a plan, this being the draft <i>Lake Macquarie Waterway Flood Risk Study and Management Plan</i>, as outlined in Appendix 11. Concurrence from the Director-General is required for this inconsistency.

4.4 - Planning for Bushfire Protection	The direction applies to land that has been identified as bushfire prone, and requires consultation with the NSW Rural Fire Service, as well as the establishment of Asset Protection Zones.	To be determined: Part of the subject lands are bushfire prone. When the Planning Proposal was associated with Draft Amendment No. 43, Council consulted with the NSW Rural Fire Service in December 2008. The NSW Rural Fire Service raised no objection to the rezoning, however, advised that further development of the subject lands would require to comply with the requirements of <i>Planning for Bushfire Protection 2006</i> (refer to Appendix 12 for a copy of the correspondence). The Planning Proposal is considered to be accordance with the NSW Rural Fire Service requirements. Any further development of the subject lands must have regard to the provisions of <i>Planning for Bushfire Protection 2006</i> as per the current provisions in LMLEP 2004. However, due to the time that has elapsed since the original consultation, additional consultation with the NSW Rural Fire Service maybe required prior to determining whether the Planning Proposal is consistent with the Direction.
5.1 - Implementation of Regional Strategies	The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	Consistent: The Planning Proposal is consistent with the strategic direction set by the Lower Hunter Regional Strategy as previously stated in Section B.4 of the Planning Proposal.
6.1 - Approval and Referral Requirements	The direction prevents a draft amendment from requiring concurrence from, or referral to the Minister or a public authority.	Consistent: The Planning Proposal will not require the concurrence from or referral to a Minister or public authority, with the exception of concurrence relating to Ministerial Direction 4.3.
6.2 - Reserving Land for Public Purposes	The direction aims to facilitate land for the provision of public services as well as to remove reservations of land for public purposes where the land is no longer required for acquisition.	Consistent: The subject lands are privately owned and are not reserved for public purposes. The subject lands were erroneously zoned 6(2) Tourism and Recreation Zone. The objectives of the 6(2) zone include to “provide land primarily for commercial recreation and tourist uses” and does not include the provision of land for public purposes.
6.3 - Site Specific Provisions	The direction requires that a draft LEP make use of existing land use zone categories and not introduce additional controls.	Consistent: The Planning Proposal will utilise existing land use zone categories and will not introduce additional controls.

C. Environmental social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

There will be no potential for loss of critical habitat or threatened species, populations or ecological communities, or their habitats as a result of the Planning Proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No environmental effects are anticipated as a result of the Planning Proposal. However, it should be noted that the subject lands are located within a 'high' to 'low flooding hazard' area as outlined in Appendix 6. No likely environmental effects are anticipated as the Planning Proposal is considered to be in accordance with the draft *Lake Macquarie Waterway Flood Risk Study and Management Plan*, which has been prepared for the purpose of identifying and managing flooding risks.

10. How has the planning proposal adequately addressed any social and economic effects?

No significant social and /or economic impacts are anticipated to result from the proposal. The Planning Proposal will rectify a historical zoning anomaly and will ensure that LMLEP 2004 is current, accurate, and effective.

D. State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The Planning Proposal does not require changes to the delivery of public infrastructure to the area.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

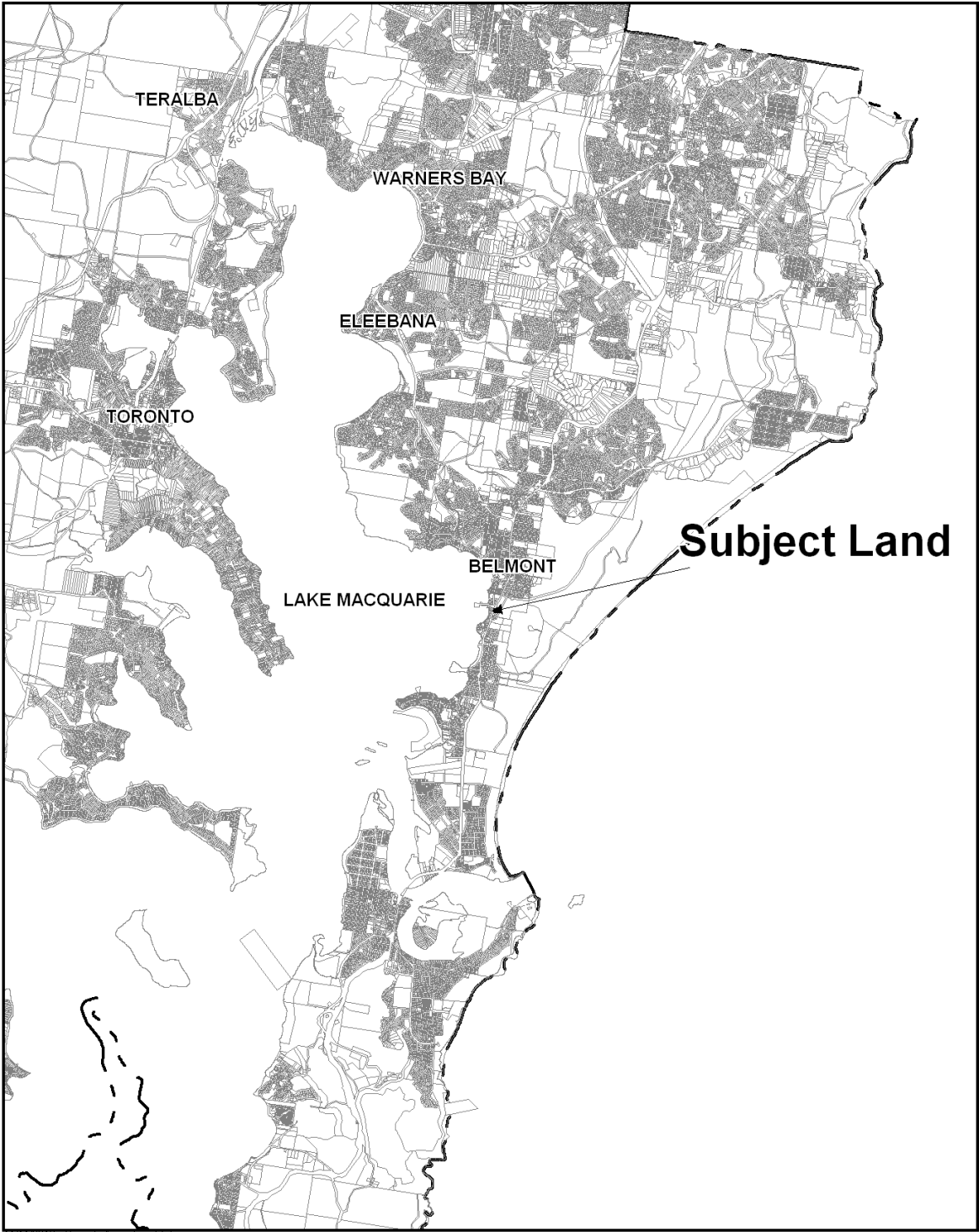
Consultation State and Commonwealth public authorities has not occurred as part of this Planning Proposal and will be undertaken in accordance with the Gateway Determination. Recommended State and Commonwealth public authorities that should be consulted include:

- NSW Rural Fire Service;
- Department of Planning and Infrastructure;
- Office of Environment and Heritage;
- Office of Communities - Sport and Recreation;
- Land and Property Information;
- Roads and Maritime Services;
- Hunter Water Corporation;
- Ausgrid;
- Tourism NSW; and
- Member for Swansea – Gary Edwards, MP.

Part 4 – Details of Community Consultation

Public Exhibition: There has been no previous public consultation regarding this Planning Proposal. Council's preference is for a public exhibition period of 14 days. Any public consultation will be undertaken in accordance with the Gateway Determination.

Appendix 1 – Locality Map



11/11/2010 Project Amendment 5/

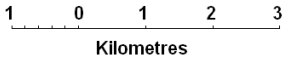


Produced by Integrated Planning

Belmont

 **Subject Land**

NORTH



Appendix 2 – Existing zoning under LMLEP 2004 and Aerial Photograph



Locality: BELMONT



Produced by Integrated Planning
Project: Draft Amend66 27/02/2012

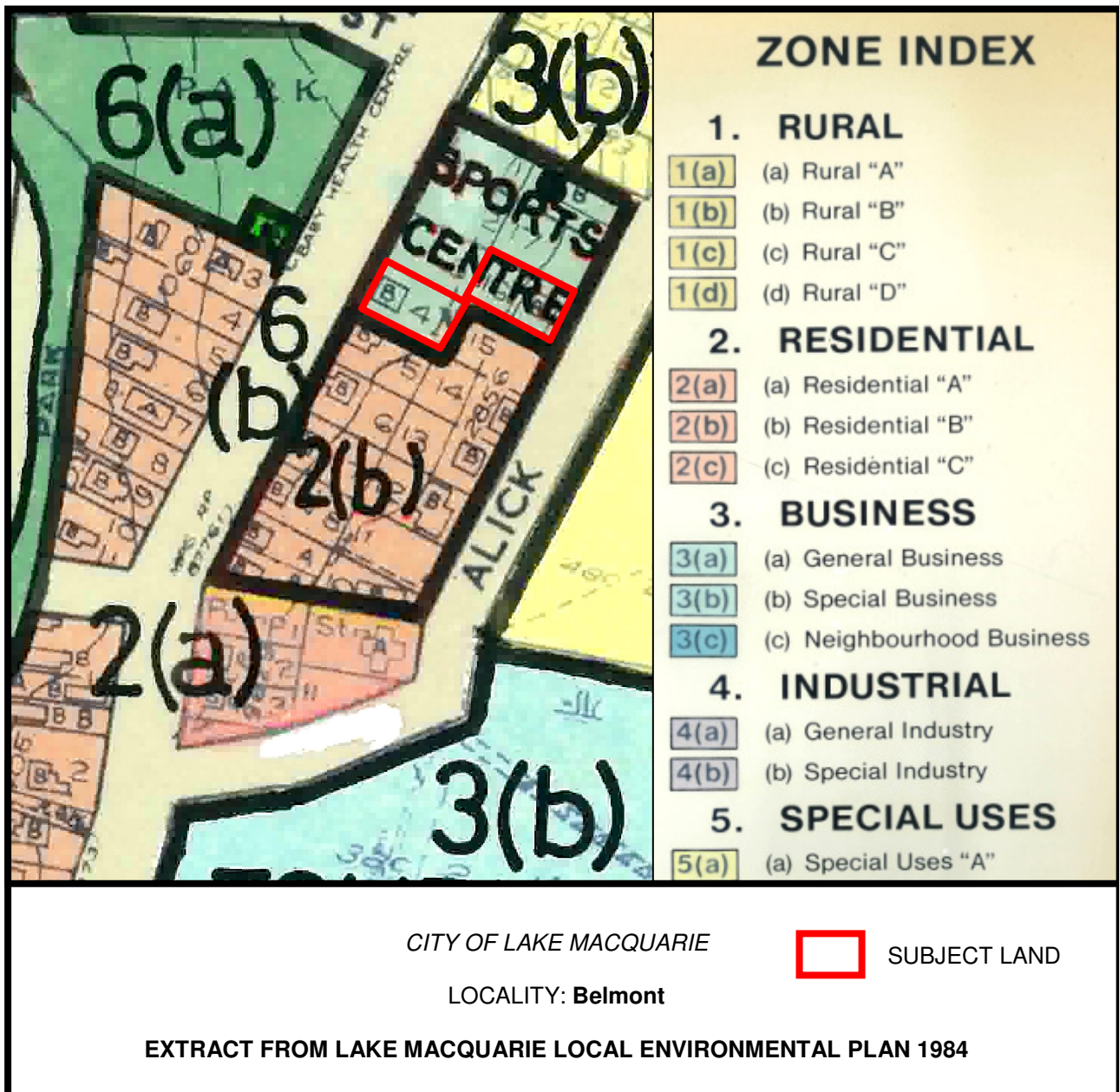
EXTRACT FROM EXISTING LMCC LEP2004 ZONINGS
SKM AusImage 2010 Aerial Photography



Subject Land



Appendix 3 – Zoning under LMLEP 1984



Appendix 4- Proposed zoning under LMLEP 2004



		ENVIRONMENTAL PLANNING & ASSESSMENT ACT , 1979 CITY OF LAKE MACQUARIE LAKE MACQUARIE LOCAL ENVIRONMENTAL PLAN 2004 (DRAFT AMENDMENT NO. 66)		SHEET 1 OF 1
DRAWN BY J.B.		DATE 27/02/2012		STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS THE LAKE MACQUARIE LOCAL ENVIRONMENTAL PLAN 2004
PLANNING OFFICER G.A.				
FILE NO. COUNCIL RZ/9/2007		DEPT. of PLANNING		CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS.
				GENERAL MANAGER DATE
PUBLISHED ON NSW LEGISLATION WEBSITE ON				

Appendix 5 – Proposed zoning under Council's draft Standard Instrument LEP



Appendix 6 – Proposed lot size map under Council’s draft Standard Instrument LEP



Appendix 7 – Proposed maximum building height map under Council's draft Standard Instrument LEP



Appendix 8 – Copy of Council resolution and report 30 January 2012



Recommendations of the City Strategy Committee Meeting

30 January 2012

12STRAT002 Planning Proposal to Amend Lake Macquarie LEP 2004 - 667 Pacific Highway and 31 Alick Street, Belmont

Folder No: RZ/9/2007

Report By: Strategic Planner - Grant Alderson

Submission and Committee's Recommendation:

No. 2

Council:

- A. Resolves to prepare a draft amendment to Lake Macquarie Local Environmental Plan 2004 in accordance with the provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to rezone 667 Pacific Highway, and 31 Alick Street, Belmont from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone.
- B. Forwards the Planning Proposal (Attachment 1) to the Department of Planning and Infrastructure for Gateway Determination.
- C. Undertakes consultation with State Government agencies and service authorities if so directed by the Department of Planning and Infrastructure.
- D. Resolves to place the Planning Proposal on exhibition, subject to the outcome of the Gateway Determination.
- E. Notifies the landowners of the progress of the proposal.

In accordance with Section 375A of the Local Government Act 1993 a division took place.

For the Motion Against the Motion

Cr. Birt
Cr. Coghlan
Cr. Fraser
Cr. Gissane
Cr. J Harrison
Cr. Parsons
Cr. Piper
Cr. Scarfe
Cr. Wallace
Cr. Johnston
Cr. W Harrison
(carried)

Chairperson

General Manager

3

City Strategy Committee Meeting 30 January 2012

12STRAT002 Planning Proposal to Amend Lake Macquarie LEP 2004 - 667 Pacific Highway and 31 Alick Street, Belmont

Council Ref: RZ/9/2007 - D02327289
Report By: Strategic Planner - Grant Alderson

Précis:

This report seeks a Council resolution to initiate the rezoning of 667 Pacific Highway, and 31 Alick Street, Belmont from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone and to submit a Planning Proposal to the Department of Planning and Infrastructure (DoPI) for Gateway Determination.

The subject land was previously part of another LEP amendment. However, several content changes to that LEP amendment resulted in the subject lands being omitted from the LEP amendment.

Due to recent changes to the plan making provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* it is now necessary to prepare a Planning Proposal and seek Gateway Determination from DoPI to progress the rezoning.

Recommendation:

Council:

- A. Resolves to prepare a draft amendment to Lake Macquarie Local Environmental Plan 2004 in accordance with the provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to rezone 667 Pacific Highway, and 31 Alick Street, Belmont from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone.
- B. Forwards the Planning Proposal (Attachment 1) to the Department of Planning and Infrastructure for Gateway Determination.
- C. Undertakes consultation with State Government agencies and service authorities if so directed by the Department of Planning and Infrastructure.
- D. Resolves to place the Planning Proposal on exhibition, subject to the outcome of the Gateway Determination.
- E. Notifies the landowners of the progress of the proposal.

Background:

On 28 April 2008, Council resolved to prepare a draft amendment to Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to investigate the rezoning of 667 Pacific Highway and 31 Alick Street, Belmont (08STRAT020). The amendment was to rezone the subject lands from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone to rectify a historical zoning anomaly. The draft amendment was proceeding to public exhibition; however, due to several content changes to that draft amendment, the subject lands were omitted and never completed the rezoning process.

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Due to recent changes to the plan making provisions of the *EP&A Act* it is now necessary to initiate the rezoning of the subject lands again through a planning proposal and seek Gateway Determination from DoPI.

The subject lands include:

- a dwelling house at 667 Pacific Highway Belmont constructed prior to 1965; and
- an attached dual occupancy development at 31 Alick Street Belmont constructed in 2006. A multiple dwelling housing development was constructed on the site between 1965 and 1979 but was destroyed by fire in 2003.

At the time of development, 667 Pacific Highway and the initial residential development on 31 Alick Street were zoned 2(a) Residential under the Northumberland County District Planning Scheme 1960. The Lake Macquarie Local Environmental Plan 1984 (LMLEP 1984), replaced the Northumberland Scheme and changed the land use zone of the subject lands to 3(b) Special Business along with squash courts located adjacent to the north (refer to Appendix 3 in Attachment 1). However, a residential zone was maintained for all allotments located to the south of the subject lands under LMLEP 1984. The preparation of LMLEP 2004 resulted in the 3(b) Special Business Zone being converted to 6(2) Tourism and Recreation Zone (refer to Appendix 2 in Attachment 1).

Investigations concluded that the subject lands had been erroneously zoned 3(b) Special Business under LMLEP 1984 and then subsequently 6(2) Tourism and Recreation under LMLEP 2004. It is considered that a 2(1) Residential Zone is the most appropriate land use zone considering the current and historical uses and previous zoning errors. Rezoning the subject lands to 2(1) Residential is recommended to rectify this historical zoning anomaly.

Proposal:

It is proposed that Council resolve to prepare and support a draft amendment to LMLEP 2004 to rezone 667 Pacific Highway, and 31 Alick Street, Belmont from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone. The draft amendment will rectify a historical zoning anomaly and enable the continued use of the site for residential purposes.

A Planning Proposal outlining the proposed rezoning has been prepared and is presented in Attachment 1. The Planning Proposal is required to be sent to DoPI for Gateway Determination in accordance with Section 56 of the *EP&A Act*.

Consultation:

During the preparation of the previous draft amendment, the subject lands were part of the following consultation process:

1. Council's Rezoning Appraisal and Prioritisation Panel. Members of the Rezoning Appraisal and Prioritisation Panel identified that the proposal had merit.
2. The owner of the adjacent squash courts at 17 Alick Street Belmont. The consultation identified that they had no intentions to expand the squash court facility onto the subject lands at a future date.

3. State government agencies and stakeholders outlined in the table below:

Department of Planning	Department of Arts, Sport and Recreation
Department of Lands	Former Member for Swansea – Robert Coombs MP
Roads and Traffic Authority	Tourism NSW
Hunter Water Corporation	NSW Rural Fire Service
Energy Australia	

No objections were raised by any of the above agencies and stakeholders.

The Department of Planning and Infrastructure, as part of the Gateway Determination, will identify any further consultation requirements with state government agencies and stakeholders. The Gateway Determination will also stipulate the requirements for community consultation.

Implications:

Policy Implications:

Lake Macquarie Local Environmental Plan 2004

The Planning Proposal is consistent with the objectives of LMLEP 2004. Once published, the Planning Proposal will result in the land use zone applying to the subject lands changing from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone.

Lake Macquarie Standard Instrument LEP

The Planning Proposal aims to correct a zoning anomaly present in LMLEP 2004 that has been carried over from LMLEP 1984. The Planning Proposal will ensure that the land use zone applied to the subject lands in LMLEP 2004 reflects the current and historical uses of the site. The Planning Proposal will have implications for the Lake Macquarie Standard Instrument LEP as it is a conversion of LMLEP 2004. Once published, the Planning Proposal will ensure that the zoning anomaly present in LMLEP 2004 is not carried over into the Lake Macquarie Standard Instrument LEP. Details of the proposed changes to Lake Macquarie Standard Instrument LEP are outlined in the Planning Proposal in Attachment 1.

Lifestyle 2020 Strategy

The Planning Proposal is consistent with the aims and objectives of the Lifestyle 2020 Strategy. Access to the Belmont commercial and retail centre is readily available, with public transport options also available to the Charlestown regional centre. The subject lands are compatible with surrounding land uses, which are predominately low-density residential development. Furthermore, the subject lands are currently being utilised for residential purposes.

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Lake Macquarie Sea Level Rise Preparedness Adaptation Policy

The goal of this policy is to assist Council in responding to emerging sea level rise hazards and risks. Under this Policy, Council has adopted the NSW Office of Environment and Heritage projected upper sea level rise figure for the year 2100 of up to 0.91m as the basis for Council risk assessment, planning and development decisions.

The draft Lake Macquarie Waterway Flood Risk Study and Management Plan, (the draft study and plan) provides an outline of the sea level rise implications for the subject land in accordance with the NSW Office of Environment and Heritage projected upper sea level rise figure. The draft study and plan also outlines 'risk management measures' in relation to rezoning proposals. Based on the draft study and plan, the sea level rise implications for the subject lands have been identified and the Planning Proposal is considered to be in accordance with the rezoning 'risk management measures' (refer to Appendix 7 of Attachment 1 for details). As a result, the Planning Proposal is considered to have adequately considered and responded to sea level rise hazards consistent with the Policy goal.

Policy for Managing Contaminated or Potentially Contaminated Land

The subject land is not identified in Council records as contaminated or potentially contaminated land. Additional contamination investigations are not warranted as the rezoning seeks to rectify a zoning anomaly and ensure that the land use zone applied to the subject lands reflects the current and historic uses of the site. Any future development of the subject lands will need to comply with relevant contamination provisions in the Lake Macquarie Development Control Plan No. 1.

Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals

The Planning Proposal is consistent with Council's Biodiversity Planning Policy and Guidelines For LEP Rezoning Proposals. The current and historic use of the subject lands is low-density residential housing. The subject lands are not considered to contain any threatened species or endangered ecological communities.

Lower Hunter Regional Strategy 2006 (LHRS)

The subject lands contain existing residential development within an established residential area with adequate services and infrastructure. Therefore, it is considered that the Planning Proposal is consistent with the objectives of the LHRS.

State Environmental Planning Policies

State Environmental Planning Policy No 71 – Coastal Protection is the only SEPP that applies to the proposal. The Planning Proposal is consistent with this SEPP as outlined in the Planning Proposal in Attachment 1.

Section 117 Directions

The Planning Proposal is consistent with all relevant Section 117 Directions except Direction 4.3 – Flood Prone Land. Justification for this inconsistency is provided in the Planning Proposal at Attachment 1. Concurrence from the Director General will need to be sought for this inconsistency. Details of s117 directions are outlined in the Planning Proposal in Attachment 1.

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Environmental Implications:

The environmental impacts resulting from the Planning Proposal will be negligible. The rezoning of the subject lands will clarify the future use of the land. Given the location and context of the site, it is considered that the proposed 2(1) Residential zone is appropriate.

Social Implications:

The social implications resulting from the Planning Proposal will be negligible. The land is currently utilised for residential purposes, which is consistent with the provisions of the 2(1) Residential Zone and the dominant surrounding residential land use.

Financial Implications:

There will be no specific financial implications for Council apart from use of staff resources in processing the LEP amendment in accordance with Council's LEP amendment process. Council will cover the costs associated with processing the LEP amendment, as the zoning anomaly is believed to be the result of an historic drafting error.

Risk and Insurance Implications:

It is considered there is negligible risk or insurance implications to Council as a result of the proposed amendment. The preparation of an amendment to LMLEP 2004 is a regular Council activity governed by the provisions of the *EP&A Act*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act* and *Environmental Planning and Assessment Regulation 2000* as well as Council procedure.

Options:

The options available to Council are:

1. Resolve to initiate the rezoning of the subject lands and forward the Planning Proposal to the Department of Planning and Infrastructure (DoPI) for Gateway Determination. This is the recommended option, as it will allow LMLEP 2004 to be amended to rectify a zoning anomaly.
2. Resolve to make amendments to the Planning Proposal prior to sending it to DoPI for Gateway Determination.
3. Resolve not to initiate the rezoning of the subject lands and advise the landowners of its decision.

Conclusion:

The proposed residential land use for the subject lands at 667 Pacific Highway, and 31 Alick Street, Belmont, is consistent with current Council and State policy, and the historical and current uses of the land. Rezoning is necessary to rectify an historical zoning anomaly, clarify the future use of the site, and provide greater certainty to the landowners in terms of permissible development. It is recommended that Council supports the preparation of an LEP amendment for the subject lands and resolves to send the Planning Proposal to the Department of Planning and Infrastructure for Gateway Determination.

City Strategy Committee Meeting
30 January 2012

Manager - Integrated Planning - Sharon Pope

Attachments:

- | | |
|---|-----------|
| 1. Planning Proposal – Draft Amendment to Lake Macquarie Local
Environmental Plan 2004 – 667 Pacific Highway and 31 Alick Street,
Belmont | D02393042 |
|---|-----------|

Appendix 9 – Summary of response to SEPP 71 clause 8 Matters for consideration

(a) the aims of this Policy set out in clause 2,

(1) Policy aims in clause 2:

(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. The rezoning will not affect the existing use of the site, the coastal foreshore, or coastal management strategies. The subject lands do not have direct access to the coastal foreshore and are not visible from the coastline. No significant impacts on the coastal zone is anticipated.*

(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and

Consistent. *The subject lands do not have direct access to the coastal foreshore and are not visible from the coastline.*

(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and

Consistent. *As per comment under (a)1(b)*

(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and

Consistent. *The subject lands are not located in an area defined as a 'sensitive Aboriginal cultural landscape' by the Lake Macquarie Aboriginal Heritage Management Strategy and the rezoning will not affect the existing use of the site. The purpose of the rezoning is to rectify an historical zoning anomaly.*

(e) to ensure that the visual amenity of the coast is protected, and

Consistent. *As per comment under (a)1(b)*

(f) to protect and preserve beach environments and beach amenity, and

Consistent. *As per comment under (a)1(b)*

(g) to protect and preserve native coastal vegetation, and

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands consist of existing residential development and no significant native vegetation has been identified. There will be no potential for loss of significant native vegetation, critical habitat or threatened species, populations or ecological communities, or their habitats as a result of the Planning Proposal.*

(h) to protect and preserve the marine environment of New South Wales, and

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands consist of existing residential development that does not have direct access to the coastal foreshore. The rezoning will not affect the existing use of the site. No significant offsite impacts are anticipated on the marine environment.*

(i) to protect and preserve rock platforms, and

Consistent. *The subject lands consist of existing residential development that does not have direct access to the coastal foreshore, or any rock platforms.*

(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. No significant impact on the coastal zone is anticipated. The Planning Proposal is not considered to be inconsistent with the management of the coastal zone in accordance with the principles of ecologically sustainable development.*

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. The rezoning will not affect the existing use of the site or significantly change the type, bulk, scale and size of development permitted. In addition the subject lands are not visible from the coastline.*

(l) to encourage a strategic approach to coastal management.

Consistent. *The purpose of the rezoning is to rectify an historical zoning anomaly. The rezoning will not affect the existing use of the site, the coastal foreshore, or coastal management strategies. The subject lands do not have direct access to the coastal foreshore and is not visible from the coastline. No significant impact on the coastal zone is anticipated.*

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

Consistent. As per comment under (a)1(b)

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

Consistent. As per comment under (a)1(b)

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

Consistent. As per comment under (a)1(k)

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

Consistent. As per comment under (a)1(b) and (a)1(k)

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

Consistent. As per comment under (a)1(b) and (a)1(k)

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

Consistent. As per comment under (a)1(g)

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

Consistent. As per comment under (a)1(h)

(i) existing wildlife corridors and the impact of development on these corridors,

Consistent. As per comment under (a)1(g)

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

Consistent. The purpose of the rezoning is to rectify an historical zoning anomaly. The rezoning will not affect the existing use of the site, the coastal foreshore, or coastal management strategies. The subject lands are not located within an identified coastal hazard zone and existing development on the site does not impact on coastal processes. Sea level rise implications for the subject lands have been addressed as part of Ministerial Direction 4.3 Flood Prone Land.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

Consistent. As per comment under (a)1(b)

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

Consistent. As per comment under (a)1(d)

(m) likely impacts of development on the water quality of coastal waterbodies,

Consistent. The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands are already developed for residential purposes and the rezoning will not affect the existing use of the site. The subject lands are located adjacent to the Belmont Lagoon which is zoned 7(1) Conservation (Primary) Zone under LMLEP 2004 as identified in Appendix 2. An existing sealed road (Alick St) and associated stormwater infrastructure separates the subject lands from the Belmont Lagoon and sewer services are provided in the area. No change in the water quality of coastal water bodies is anticipated as a result of the Planning Proposal.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

Consistent. The Planning Proposal is not within the vicinity of any item or area of local, regional, or state significance.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Consistent. The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands are already developed for residential purposes and the rezoning will not affect the existing use of the site.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

No applicable.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

No applicable.

Appendix 10 – Summary of response to S.117 Direction 4.3 Flood Prone Land

Objectives

- (1) The objectives of this direction are:
 - (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
 - (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

Where this direction applies

- (2) This direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA.
 - **The direction applies.** *Lake Macquarie City Council is responsible for flood prone land.*

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.
 - **The direction applies.** *The Planning Proposal seeks to alter a zone that affects flood prone land.*

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005* (including the *Guideline on Development Controls on Low Flood Risk Areas*).
 - **Consistent.** *Clause 32 of LMLEP 2004 includes provisions that are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. The Planning Proposal will not alter flood prone land provisions within LMLEP 2004.*
- (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.
 - **Inconsistent.** *The Planning Proposal intends to rezone land located within a 'flood planning area' from 6(2) Tourism and Recreation Zone to 2(1) Residential Zone. The topography of the subject land varies from 1m to 4m+ AHD and parts of the land are below current and proposed 'flood planning levels'. Under the Lake Macquarie Flood Plain Management Plan 2001 the flood planning level for the subject lands is 1.88m AHD. Under the draft Lake Macquarie Waterway Flood Risk Study and Management Plan 2011 the flood planning level being considered by Council is 2.36m.*
- (6) A planning proposal must not contain provisions that apply to the flood planning areas which:
 - (a) permit development in floodway areas,
 - **Consistent.** *The subject lands are not located within a floodway area.*
 - (b) permit development that will result in significant flood impacts to other properties,
 - **Consistent.** *The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands are already developed for residential purposes and the rezoning will not affect the existing use of the site.*
 - (c) permit a significant increase in the development of that land,
 - **Consistent.** *The purpose of the rezoning is to rectify a historical zoning anomaly. The subject lands are already developed for residential purposes and the rezoning will not permit the potential for a significant increase in residential development intensity.*

- (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
 - **Consistent.** *The purpose of the rezoning is to rectify an historical zoning anomaly. The subject lands are already developed for residential purposes and the rezoning will not affect the existing use of the site.*
- (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.
 - **Consistent.** *The planning proposal does not include provisions that permit development to be carried out without development consent.*
- (7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).
 - **Consistent.** *The Planning Proposal will not impose flood related development controls above the residential flood planning level for residential development on land.*
- (8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the *Guideline on Development Controls on Low Flood Risk Areas*) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).
 - **Consistent.** *The draft Lake Macquarie Waterway Flood Risk Study and Management Plan 2011 has been prepared in accordance with the Floodplain Development Manual 2005.*

Consistency

- (9) A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:
 - (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or
 - **Consistent.** *The Planning Proposal is considered to be in accordance with the draft Lake Macquarie Waterway Flood Risk Study and Management Plan 2011 and plan 'risk management measures' in relation to rezoning proposals. (Refer to Appendix 11 for details).*

Note: The draft Lake Macquarie Waterway Flood Risk Study and Management Plan 2011 has been used to demonstrate consistency with Clause 9(a), as it is (i) based on the most accurate assessment of flood risks (including sea level rise); (ii) provides rezoning risk management measures; and (iii) has been prepared in accordance with the Floodplain Development Manual 2005. The Lake Macquarie Flood Plain Management Plan 2001 has not been referred to as it was prepared prior to the publication of the Floodplain Development Manual 2005 and would not satisfy the requirements of Clause 9(a).
 - (b) the provisions of the planning proposal that are inconsistent are of minor significance.

Not applicable

Appendix 11 – Planning Proposal compliance with Draft *Lake Macquarie Waterway Flood Risk Study and Management Plan*

1. Introduction

Lake Macquarie City Council (Council) exhibited the draft *Lake Macquarie Waterway Flood Risk Study and Management Plan* (the draft study and plan) in 2011. The draft study and plan was prepared in accordance with the *Floodplain Development Manual 2005* and considers the impact of a predicted sea level rise of 0.91m by 2100. The draft study and plan outlines 'risk management measures' in relation to rezoning proposals. The draft study and plan states that: "...land in the lake flood hazard areas should not be rezoned if it increases development intensity..." (p. 37).

2. Proposed flood hazards and Flood Planning Levels (FPLs)

Based on the findings of the draft study and plan Council is currently considering a range of proposed flood hazard levels. These are as follows:

- land below 1m AHD (Australian Height Datum) is proposed to be a 'high lake hazard' area as it will be permanently inundated in 2100;
- land below 1.5m AHD is proposed to be a 'high flooding hazard' area as it will be frequently subject to flooding; and
- land between 1.5m and 2.32m AHD is proposed to be a 'low flooding hazard' area as it will be subject to infrequent flooding.

In addition, a proposed residential FPL of 2.36m AHD is being considered by Council as the minimum floor level for new low-density residential and commercial developments in flood prone areas.

3. The subject lands

The subject lands are located 100m east of Lake Macquarie waterway and adjacent to Belmont Lagoon. The topography of the subject land varies from 1m to 4m+ AHD. The floor level of the existing dwellings are estimated to be 4m+ AHD for 667 Pacific Highway and between 1m and 2m AHD for 31 Alick Street.

4. Compliance assessment

The Planning Proposal is considered to be in accordance with the draft study and plan 'risk management measures' in relation to rezoning proposals.

The subject lands are not anticipated to be located within the proposed 'high lake hazard' area and permanently inundated. However, parts of the subject lands 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.

In relation to the latter, the rezoning will not result in the intensification of development in the 'high' to 'low flooding hazard' areas. The subject lands have been developed with residential dwellings. The Planning Proposal will rectify a zoning anomaly to ensure that LMLEP 2004 reflects the historical and current residential use of the subject lands.

In addition, the Planning Proposal will not remove the requirement that future development must comply with flood planning controls, such as the proposed residential FPL. Any future development proposals seeking to replace the existing housing stock will have to comply with the residential FPL in force at that time.

Appendix 12 – NSW Rural Fire Service Consultation

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 8741 5555
e-mail: development.control@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
HOMEBUSH BAY NSW 2127

Facsimile: (02) 8741 5550

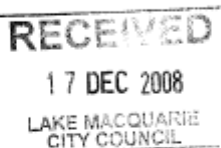


The General Manager
Lake Macquarie Council
Box 1906
HUNTER REGION MAIL CENTRE NSW
2310

Your Ref: RZ/9/2007

Our Ref: A08/0571

Attention: Adam Overden



9 December 2008

Dear Mr Overden,

Re: Draft Amendment to Lake Macquarie Local Environmental Plan 2004
667 PACIFIC HWY & 31 ALICK STREET, BELMONT NSW

I refer to your letter dated 19 November 2008 seeking the NSW Rural Fire Service advice in accordance with section 62 of the *Environmental Planning and Assessment Act 1979*.

The NSW Rural Fire Service (RFS) has no objection to the rezoning and notes that the sites and adjoining land is identified as bush fire prone on the Lake Macquarie Bush Fire Prone Land Map. You are advised that further development will be required to comply with the requirements of *Planning for Bush Fire Protection 2006*.

A present the bush fire hazard to the east is considered low. Council should be mindful that a revegetated lagoon foreshore will increase this hazard.

For any enquiries regarding this correspondence please contact Garth Bladwell.

Yours faithfully,

 Nika Fomin
Development Control Co-ordinator

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.

1 of 1