

Planning Proposal
Amendment to Lake Macquarie Local Environmental Plan
2004

96 and 98 Marks Point Road, Marks Point

Local Government Area: Lake Macquarie

Name of Draft LEP: Lake Macquarie Local Environmental Plan 2004
(Amendment No. 78)

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 enable the rezoning of a current Marine Workshop to facilitate residential development.

The subject site is located at 96 and 98 Marks Point Road, Marks Point. The site is within the foreshore area of Marks Point and adjoins Residential land to the east and west (refer to Figure 1, Subject Land Locality Map).

Draft LMLEP 2012 – Standard Instrument LEP

This Planning Proposal considers both LMLEP 2004 and draft LMLEP 2012. The conversion of LMLEP 2004 to draft 2012 as it relates to the subject site is summarised in Table 1 below.

Table 1: Conversion from LMLEP 2004 to draft LMLEP 2012 that affect the subject site and this Planning Proposal.

Existing Provisions LMLEP 2004	Standard Instrument Conversion (draft LMLEP 2012)
Zone 6(2) Tourism and Recreation) Zone	Zone SP3 Tourist

Part 2 – Explanation of the Provisions

The draft amendment proposes the following changes to the LMLEP 2004 map and instrument:

Amendment Applies To	Explanation of the Provision
LMLEP 2004 - Map	It is proposed that the subject land, comprising (Lot A, DP 333868) 96 Marks Point Road, and (Lot B, DP 333868), 98, Marks Point Road Marks Point, will be rezoned to Zone 2(1) Residential Zone (refer to Figure 5, Proposed LMLEP 2004 Instrument Map).
LMLEP 2004 - Schedule 2 Subdivision standards	No changes to the current standards within LMLEP 2004 for a 2(1) Residential Zone required.
LMLEP 2004 - Minimum Lot Size	The subdivision standards of LMLEP 2004 for a 2(1) Residential zone will apply.

Amendment Applies To	Explanation of the Provision
LMLEP 2004 - Building Height	The building height controls within DCP No.1 apply to the draft amendment.
LMLEP 2004 - Land uses	The current land uses for the proposed Zone 2(1) Residential Zone apply to the draft amendment.

The draft amendment proposes the following changes to draft LMLEP 2012.

Amendment Applies To	Explanation of the Provision
Draft LMLEP 2012 – Land Application Map	It is proposed that the subject land, comprising (Lot A, DP 333868) 96 Marks Point Road and (Lot B, DP 333868), 98, Marks Point Road Marks Point, will be rezoned to Zone R2 Low Density Residential.
Draft LMLEP 2012 - Lot Size Map	No changes to the proposed standards within draft LMLEP 2012 will be required except that a minimum lot size of 450m ² will apply to a Residential Zone.
Draft LMLEP 2012 – Height of Buildings Map	The building height controls from DCP No.1 have been transferred to draft LMLEP 2012, and will form part of the Height of Buildings Map.
Draft LMLEP 2012 - Land uses	The Zone R2 Low Density Residential land uses apply to the former Zone 2(1) Residential Zone of LMLEP 2004.

In summary Table 2 below shows the results of the conversion from LMLEP 2004 to that of draft LMLEP 2012, that will affect the subject site as a result of the amendment.

Table 2: Conversion - resulting zones from LMLEP 2004 to LMLEP 2012

Provisions - LMLEP 2004	Standard Instrument Conversion (draft LMLEP 2012)
Zone 2(1) Residential Zone	R2 Low Density Residential

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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?

The proposal is not as a result of any specific strategic studies for the site. However, a report has been produced by a consultant on behalf of the proponent, proposing a medium density residential zoning over the site.

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

A Medium density residential zone was considered for the site as requested by the proponent. However, when considered against all relevant SEPPS and Section 117 Directions in particular Ministerial Direction 4.3 Flood Prone Land, it was considered that to rezone the land to Medium Density would be inconsistent with the Direction and potentially increase the number of residents at risk to flooding. It was also considered as premature to change the zone to a higher density until an Area Adaptation Plan was fully considered and adopted by the Council for the Marks Point Area. An Area Adaptation Plan being a means of addressing the impacts of Sea Level Rise in areas of high flood hazard for future development potential.

The subject sites contain a large workshop on number 98 Marks Point Road which is used for the servicing of motor boats and general marine services. There are two dwellings on number 96 Marks Point Road, the lot being located toward the foreshore. In terms of any intensification of the subject sites, it is considered that given the existence of dwellings on one of the subject lots that a rezoning to 2(1) would be a similar level of development that could occur to that which currently exists.

The removal of the large Marine workshop which covers the majority of the site, to a use which is more in keeping with the surrounding residential amenity, is also considered to be a relevant factor with this proposal (refer to figure 2 Aerial). However, some intensification from an Industrial type use to that of residential would be an outcome on this lot.

The current zone 6(2) Tourism and Recreation allows for far greater intensification of the site than that of the proposed 2(1) Residential Zone. The subject sites are essentially a commercial zone which allows uses such as backpackers accommodation; community facilities; educational establishments; functions centres; hotel or motel accommodation, places of public worship, pubs; recreation facilities, restaurants; serviced apartments, sporting facilities; and tourist resorts.

Although a low density residential zone does not reflect the adjoining medium-higher density zones to the east and the west of the proposal, it is considered that given the circumstances of the lots being within a High Flood Hazard Area, that a low density residential use is the preferable zone without supporting evidence that would support a higher zone in the circumstances (refer to Figure 6 – Flood Prone Land - Contour Map).

Consideration was also given of including the adjoining site to the west number 100, lot (Lot 42, DP 580181) in this planning proposal which has converted from 6(2) Tourist and Recreation Zone in (LMLEP 2004) to that of SP3 Tourist in draft LMLEP 2012.

The owner of this site has agreed to remain as SP3 Tourist Zone (as per draft LMLEP 2012) given the current approved use, Serviced Apartments, is not permissible in a Residential zone. Further, future extensions or new uses in a residential zone would then be the subject of existing use rights which is not appropriate in the current context. Therefore, the current planning proposal only relates to 2 lots being 96 and 98 Marks Point Road, Marks Point.

Low-density residential development is also consistent with the vision of Council's Lifestyle Strategy 2030 and the LHRS.

The following is relevant for the proposed change in zone:

- The sites 96 and 98 Marks Point Road were rezoned to 6(2) Tourism and Recreation under LMLEP 2004 to provide

consistency with approved uses on the site. The previous zoning was Zone 3(b) Special Business under LMLEP 1984 for a Marine Business.

- 96 Marks Point Road has 2 dwellings which are currently in use as residences.
- The existing marine repair and servicing functions on 98 Marks Point Road is no longer viable in this location and has declined over the intervening years since the introduction of LMLEP 2004.
- 98 Marks Point Road, no longer has access to Swan Bay given the sale of the adjoining Lot 42, DP 580181, 100 Marks Point Road. This adjoining land has also recently been granted approval for serviced apartments and therefore can no longer be classed as a component of a marine workshop.
- Continuation of a Marine workshop would be inconsistent with existing residential use adjoining the site in terms of visual amenity, noise associated with working hours and business access to and from the site.
- It is considered that a low density residential zone over the two lots will not result in more intense development on the site, than that existing.
- A residential zone will provide the opportunity for additional low density housing without the loss of biodiversity values.

In order to enable residential development, an amendment to LMLEP 2004 is necessary. The amendment will ensure that future development and uses are permitted on the subject land with development consent subject to the provisions of SEPP Exempt and Complying 2008. However, it is noted that Ministerial Direction 4.3 states the following:

This direction aims 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 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.

Item (5) of the direction states:

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.

Item (6)

A planning proposal must not contain provisions that apply to the flood planning areas which:

(c) permit a significant increase in the development of that land,

Planning comment:

The proposal to rezone the land to low density residential is considered not to be a significant increase in the development of the land, given that the current 6(2) Tourism and Recreation zone allows commercial development that allows a range of commercial type uses such as serviced apartments etc., as

permissible with consent. The adjoining land to the west 100 Marks Point Road, has recently been sold and approval has been granted for serviced apartments.

(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.

Planning comment:

Development consent will be required given the location of the land. The SEPP (Exempt and Complying Codes) 2008 will not apply to development on the subject sites. The land is situated in an environmentally sensitive area on a coastal lake, which includes Lake Macquarie.

Item (9)

A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy 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

(b) the provisions of the planning proposal that are inconsistent are of minor significance.

Planning Comment:

In relation to the above, advice has been provided by staff that the proposal is consistent with the provisions of the floodplain risk management plan prepared in accordance with the Floodplain Development Manual 2005. In the context of the subject lots, the proposed draft LEP is considered to be of minor significance given that it is proposed to rezone the land to low density residential which applies similar density requirements to that existing on the land i.e. no increase in density per se. It is also important to note that the existing 6(2) Tourism and Recreation Zone allows a range of commercial development with consent on the subject sites.

Staff envisage that a future development will be able to be constructed on the site that complies with Council's floodplain and sea level rise requirements.

3. Is there a net community benefit?

A Social and economic Impact Assessment has not been undertaken as the site rezoning is limited to two lots and will have a marginal if any impact on the existing community. This is based on the fact that the employment on site has fallen from some 10 employees to the current level of 3 persons, and that the business is in decline and no longer economically viable.

However, an assessment may be sought as a component of any future development on the site.

Given the additional residential opportunities offered by the proposed development and the minimal environmental impact likely to result, the proposal is considered to provide a net community benefit. A Net Community Benefit Test has been undertaken and provided below.

Net Community Benefit Test

Issue	Assessment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	Yes. The proposal is a redevelopment of existing urban zoned land. Land in the vicinity and adjoining the subject site is zoned 2 (2) Residential (Urban Living) and used for residential uses. The exception to this is land to the immediate west of the site which will maintain its 6(2) Tourism and Recreational zone, and has approval for Serviced apartments to be established. The planning proposal although too small to be earmarked in a regional strategic direction, is within an existing urban area in the Lower Hunter Regional Strategy. The proposal is also consistent with Council's Strategic 2020 Lifestyle Strategy and draft 2030 Lifestyle Strategy in providing residential development in close proximity to the neighbourhood centre of Marks Point and Town centres of Swansea and Belmont. There is a regular bus service from Swansea to Newcastle which also services Marks Point Road.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	Yes. The proposal is located in the Lake Macquarie City Council area within the Lower Hunter Regional Strategy an identified urban area, but too small an area to be readily identifiable. The proposal is also within the Lifestyle 2030 Strategy area, which are the strategic land use studies for the Council's LMLEP 2004 and draft LMLEP 2012 respectively.
Is the LEP likely to create a precedent, or create or change the expectations of the landowner or other landholders?	The proposal is infill development that would be encouraged across the City where the opportunities exist, however, the landowner would prefer a medium density zone in preference to a low density as proposed.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was	Yes. The proposal has been considered within the context of other recent rezoning proposals and

Issue	Assessment
the outcome of these considerations?	consistency with the Lower Hunter Regional Strategy in terms of projected population growth for the urban areas of Lake Macquarie. Together with other anticipated development in the locality, there will be a negligible increase in population and therefore no perceived increased pressure on local services and facilities. The additional minimal population can be catered for mainly through spare capacity in existing infrastructure. The proposal is also not of a scale that would create any perceived adverse social and economic impact, and the provision of s.94 developer contributions will assist in funding necessary services/facilities. A traffic Impact Statement may be required at the DA stage to analyse any traffic issues associated with the junction of the Pacific Highway and Marks Point Road. In terms of the loss of 6(2) Tourism and Recreation land. This was a matter that staff have raised as a concern throughout the LGA. However, the location and the smallness of the subject lots have proven difficult to develop and therefore a rezoning of this land is considered reasonable in the circumstances.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	No. There will be limited on-going employment opportunities beyond any future building activity, except for on-gong maintenance of some individual assets for both individuals and council.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	Yes. The proposal will provide for future infill residential development, and have a positive but minor impact on the supply of residential land for LMCC in concert with the Lower Hunter Regional Strategy projections.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access?	Yes. Council and other utility services are available in Marks Point and there is adequate capability to service any future development of

Issue	Assessment
Is public transport currently available or is there infrastructure capacity to support future public transport?	the land. Lake Macquarie has an extensive and expanding network of off-road shared pathways. However, there are no proposed plans for a shared pathway in this location. Existing footpaths provide an indirect link to a proposed coastal cycleway linking Belmont and Swansea from Newcastle. Ultimately, there is a proposed link from Wallsend to Belmont via Speers Point in the north. Public transport is available in close proximity to the proposal including a regular bus service that runs from Swansea to Newcastle including Marks Points Road. It is council's view that existing public transport services are adequate for the additional demands from the site.
Will the proposal result in changes to the car distances travelled by customers, employees, and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	No. The proposal will create a negligible increase in traffic volumes on local, regional, and State roads such as the Pacific Highway and the F3 Freeway. The proposal is catering for planned infill growth in the region rather than being a catalyst for additional vehicle use. As such, the affect of the proposal in this regard is assessed as being negligible.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	No. There has not been any Consultation with agencies to date. This will occur prior to exhibition. Whilst services such as medical and child care are very limited, this is a city-wide issue, and are not likely to be greatly exacerbated by the proposed development.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	No. The sites do not contain any native vegetation and have existing Marine workshop, dwellings and associated outbuildings on the site. However, the sites are low lying and may be subject to flooding. Any future development of the sites will need to be consistent with council's Policy on flooding and tidal

Issue	Assessment
	inundation by ensuring that development is built above the known flood level, plus free board.
Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	Yes. The proposal will be compatible with surrounding and any proposed residential development. It is suggested that the amenity of the location and that of the wider community will be a positive outcome given that the current use is a marine workshop.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Yes. Any future proposal will support existing take away food shops, including cafés and Post office, and retail outlets in the immediate locality of Marks Point, Swansea or Belmont as well as the broader region.
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	No. Any future proposal will be residential in nature and may include any of the uses in the Land Use Table for the 2(1) Residential Zone, or its converted R2 Low Density Residential Zone consistent with uses in the area.
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	The proposal will provide for additional housing in a low density capacity as growth in the region occurs consistent with the projections within the Lower Hunter Regional Strategy and will generate additional jobs for the local community during the construction phase of the development. The implications of not proceeding with the LEP would render the existing land to retain the current 6(2) Tourism and Recreation zone, which has proven to be difficult to develop given the lots configuration being long and narrow lots. Retention of the current zone also means that the current use as a Marine workshop may continue to operate which is incompatible with residential uses in the adjoining and surrounding vicinity.

B. Relationship to strategic planning framework

1. 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)?

Lower Hunter Regional Strategy

The proposal is consistent with the Lower Hunter Regional Strategy. Although the subject land is not of a sufficient size to be readily identifiable, it is within an identified existing urban area and will play a role although small, in supporting increasing growth in the region.

The Lower Hunter Regional Strategy (LHRS) indicates an expected population growth of 160,000 people in the Lower Hunter, translating to an anticipated demand for 66,000 jobs by 2031. Rezoning of land to residential will provide infill residential development potential to assist in achieving the LHRS aims.

Lower Hunter Regional Conservation Plan

The proposal is consistent with the Lower Hunter Regional Conservation Plan given that there are no areas of ecological significance or sensitivity on the site.

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

The following assessment of the proposal has been undertaken against the Strategic Directions of Council's Lifestyle 2030 Strategy:

A City Responsive to its Environment

Lake Macquarie is recognised by its community and visitors as a place of significant natural assets, including the Lake and its foreshores, bays, islands and other waterways; coastline and beaches; forested mountain backdrop; variety of bushland communities and wetlands; and the diversity and quantity of native fauna.

Development of the site could occur and:

- not adversely impact on areas of ecological and visual significance;
- utilising land efficiently i.e. as infill development

Future development of the site will be the subject of a Development Application.

A Well Serviced and Equitable City

Lake Macquarie is a City of many centres whose economic viability and ability to provide services is impacted by their distance from each other and the dispersed community they serve. The Lifestyle 2030 Strategy identifies Marks Point as a Neighbourhood, with the closest Town Centres being Swansea and Belmont.

The proposal would be consistent with this objective given that it would:

- maximise existing opportunities to limit the extent of urban expansion and to provide more efficient use of existing land and infrastructure;
- accommodate the City's projected population growth within established areas, which would reduce the need for more Greenfield sites on the periphery of urban areas; and
- Providing the opportunity for a mixture of housing types to serve a range of needs.

A Well Designed and Liveable City

Lake Macquarie benefits from a high amenity natural environment. The Lifestyle 2030 Strategy seeks to recognise, retain, and enhance the character and attributes of the City that make it an attractive and liveable environment for residents, workers, investors, and visitors.

The proposal would be consistent with this objective given that it would avoid development that:

- would adversely impact on areas of high scenic significance; and
- would not adversely impact on places of cultural or heritage significance.

As the site is within an Aboriginal Sensitive Landscape Area, an Aboriginal Heritage Impact Statement may be required as a component of any future development of the site.

A City of Progress and Prosperity

Lake Macquarie has a strong economic base. This foundation has the potential to diversify and provide the community with greater employment and wealth generating opportunities.

The proposal through additional population growth would:

- contribute to use of existing services and facilities; and
- provide for on going support for other investment in the region.

An Easily Accessible City

The size and dispersed nature of Lake Macquarie can result in increase travel times, reduced public transport provision and patronage, and make reliance on private motor vehicles necessary. Future development should reduce reliance on private vehicles and support an efficient and accessible movement system.

The proposal would be consistent with this objective by:

- provision of development which is within an existing urban catchment;
- providing development that locates to support existing services and facilities and public transport;
- providing development that maintains and enhances connectivity within existing and emerging areas; and

- maximises the opportunity for development to provide greater connectivity to the open space and bicycle network.

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

An assessment has been undertaken to determine the level of consistency the proposal has with relevant State Environmental Planning Policies (SEPPs). The assessment is as follows:

SEPPs	Relevance	Implications
SEPP (Exempt and Complying Development Codes) 2008.	The SEPP aims to streamline assessment processes for development that complies with specified development standards.	Should the land be rezoned to low density residential then this SEPP would apply in terms of the uses that may be either exempt or complying development. The proposal would be consistent with this SEPP.
SEPP (Housing for Seniors or People with a Disability)	The SEPP encourages the development of high quality accommodation for our ageing population and for people who have disabilities - housing that is in keeping with the local neighbourhood.	Should the site be zoned to low density residential then this SEPP would apply. The proposal would be consistent with this SEPP.
SEPP (Affordable Rental Housing)	Establishes a consistent planning regime for the provision of affordable rental housing.	Should the site be zoned to low density residential then this SEPP would apply in terms of residential uses for the site. The proposal would be consistent with this SEPP.
SEPP No. 32 – Urban Consolidation	The SEPP aims to ensure that urban consolidation objectives are met in all urban areas throughout the State. The policy focuses on the redevelopment of urban land that is no longer required for the purpose it is currently zoned or used, and encourages local councils to pursue their own urban consolidation strategies to help implement the aims and objectives of the policy.	Should the site be zoned to low density residential then this SEPP would apply in terms of residential uses for the site. The following is relevant: ▪ The current use as a Marine workshop and zoned as 6(2) Tourism and Recreation is no longer economically viable thus allowing consideration of other higher order, and the best use of the site. ▪ Rezoning the site represents an opportunity for infill residential development to occur in accordance with

SEPPs	Relevance	Implications
		urban consolidation land use principles, and greater choice of housing mix in the locality. ▪ The site's proximity to an existing neighbourhood centre serviced by public transport and infrastructure and social infrastructure. Future residential development would be consistent with this SEPP.
SEPP No. 55 – Remediation of Land	The SEPP requires the subject land to be suitable for its intended use in terms of the level of contamination, or where the land is unsuitable due to the level of contamination, remediation measures are required to ensure that the subject land is suitable for its intended use.	A phase 1 contamination survey would need to be undertaken as a component of the rezoning process and prior to exhibition of the draft LEP. If any contamination was discovered, then a detailed Contamination Site Investigation would need to be undertaken and based on the findings, a Remedial Action Plan would likely be required. Therefore, the proposal would be consistent with this SEPP.
SEPP No. 71 – Coastal Protection	The SEPP aims to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.	The proposed rezoning is consistent with the coastal zone of the NSW Coastal Policy. Any future development of the site will need to take into account the provisions of the SEPP in respect of any public access to the foreshore area; suitability of the type of development, location and design, and its relationship to the surrounding area; any detrimental impacts that development may have on the amenity of the coastal foreshore - including a coastal lake. In terms of protection of cultural places and conservation and preservation of items of heritage, archaeological, or historic significance – an assessment will be made at the Development

SEPPs	Relevance	Implications
		Application stage. Part of the subject land falls within the Lake Macquarie Sensitive Aboriginal Cultural Landscape Map. Therefore, an Aboriginal heritage impact assessment may be required to support any future DA application.
SEPP (Infrastructure 2007)	The SEPP aims to provide a consistent planning regime for the delivery of infrastructure and the provision of services. It also provides for consultation and assessment with public authorities during the assessment process.	Development resulting from the proposal may require implementation of the provisions of the SEPP. A Traffic Impact Statement may be required at the DA stage seeking an analysis of traffic implications of the Marks Point Road and Pacific Highway intersection The proposal would be consistent with this SEPP.
SEPP - BASIX	The SEPP aims to manage the development of land in an sustainable manner and provides controls to promote requirements for energy and water consumption	Any future residential development on the subject site, will need to comply with the BASIX requirements for energy and water consumption. The proposal would be consistent with this SEPP.

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

An assessment has been undertaken to determine the level of consistency the proposal has with relevant Ministerial Directions. The assessment is provided as follows:

Ministerial Direction	Relevance	Implications
2.2 – Coastal Protection Zones	Aims to implement the principles in the NSW Coastal Policy.	The preferred land use strategy is consistent with this direction, and has been prepared in light of the NSW Coastal Policy and Coastal Design guidelines. Future development on the site should consider the design guidelines.
2.3 – Heritage Conservation	Aims to conserve items of environmental heritage by	Part of the subject land falls within the Lake Macquarie

Ministerial Direction	Relevance	Implications
	requiring a draft LEP to include provisions to facilitate the protection and conservation of Aboriginal and European heritage items.	Sensitive Aboriginal Cultural Landscape Map. Therefore, an Aboriginal heritage impact assessment may be required to support any future DA application.
3.1 – Residential Zones	Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, and to make efficient use of existing infrastructure and services, and to minimise the impact of residential development on the environment and resource lands.	The site is in close proximity to the existing townships of Swansea, Belmont, and the Marks Point Neighbourhood. Access to services is readily available. The 2(1) Residential Zone within LMLEP 2004 and that of the converted R2 Low Density Residential zone in draft LMLEP 2012 provide for a variety of housing choice, and housing types, which is sympathetic to the needs of the community, and that of infill residential development in response to the LHRS and Council's Lifestyle 2030 Strategy. Land use provisions in this zone provide for boarding houses; single dwelling houses; dual-occupancies attached and detached; dwelling houses-exhibition; group homes; seniors housing and small lot housing. Small lot housing allows a single dwelling of single or two storey construction on an allotment of land with an area of not less than 300 square metres but not more than 450 square metres. The small lot provisions provide added flexibility to the market place in establishing smaller more affordable lots for the consumer, thus providing more housing choice. Subdivision size for dual occupancies is 250 square metres, standard lots being

Ministerial Direction	Relevance	Implications
		450 square metres and Irregular and Corner lots being 600 square metres in area. Given the proximity to services, the variety of housing types and lot sizes in the residential zone, the provision of future housing needs will be consistent the aim of this direction.
3.3 - Home Occupations	Aims to encourage the carrying out or low-impact small businesses in dwelling houses	The preferred land use strategy is consistent with this direction. Home occupations are an exempt development in accordance with SEPP Exempt and Complying Code 2008.
3.4 – Integrating Land Use and Transport	Aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following: ▪ improving access to housing, jobs and services by walking, cycling and public transport, and ▪ increasing the choice of available transport and reducing dependence on cars, and ▪ reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and ▪ supporting the efficient and viable operation of public transport services, and ▪ providing for the efficient movement of freight.	The preferred land use strategy is consistent with this direction. The site is in close proximity to the existing Marks Point neighbourhood shops. A regular bus service is available to and from Marks Point to the Town Centres of Swansea, Belmont and to Newcastle. A footpath connects the site to Marks Point centre and to the Pacific Highway. The coastal cycleway/walkway strategy will provide linkages to the existing Marks Point township in the future.
4.1 – Acid Sulphate Soils	Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Acid sulphate soils (ASS) are present over the proposed draft LEP on the site. Under this Direction, Council needs to consider the Acid Sulphate Soils Planning Guidelines issued by the Department of Planning when assessing the proposal. An acid Sulphate

Ministerial Direction	Relevance	Implications
		Soil Management Plan will be required, for any proposed development in areas potentially containing acid sulphate soils, at Development Application stage.
4.2 – Mine Subsidence and Unstable Land	Aims to prevent damage to life, property, and environment on land identified as unstable or potentially subject to mine subsidence. The direction requires consultation with the Mine Subsidence Board where a draft LEP is proposed for land within a mine subsidence district.	The Mine Subsidence Board will need to be consulted as part of the s.57 consultations prior to the exhibition of any proposed draft amendment.
4.3 – Flood Prone Land	Aims to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and 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.	The site is located within a flood hazard area subject to flooding and tidal inundation. An assessment will need to be made of any future development on the site to ensure that the development is above the flood planning levels inclusive of free board. The change from a tourism use to residential use may be inconsistent with clause 5 of this direction. However, the <i>Lake Macquarie Waterway Flood Risk Management Study and Plan</i>, adopted by Council in 2012, covers the subject land. The <i>Plan</i> does not make specific recommendations about land use in areas affected by lake flooding, nor does it preclude specific uses or changes in use. However, it recognises the general provisions in the <i>NSW Floodplain Development Manual</i>, the <i>NSW Flood Risk Management Guide</i>, and the <i>NSW Coastal Planning Guideline: Adapting to sea level rise</i> to allow appropriate development in flood prone areas, while avoiding intensification of development in high risk areas.

Ministerial Direction	Relevance	Implications
		In order to achieve this aim, given the complications of lake levels and flood levels that change over the life of developments, the <i>Lake Macquarie Waterway Flood Risk Management Study and Plan</i> recommends Council engage with the community and other stakeholders to "undertake a detailed assessment...for each foreshore management area...to plan for and mitigate the effects of sea level rise (flooding and tidal inundation)" and "to review strategic landuse planning to accommodate adaptation to changed flooding and inundation due to sea level rise". "The review should include suitable development densities and types..." Council plans to begin this process with the Marks Point community later this year, and expects a completed plan will not be available until 2015. In the meantime, the proposed zoning change from 6(2) to 2(1) is unlikely to lead to an "increase in development intensity", given the conditions now applied to new developments in areas affected by lake flooding and tidal inundation. Therefore, the proposal is "in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the <i>Floodplain Development Manual</i>" as required by clause 9(a) of Section 4.3 Flood Prone Land. Based on the above, it is considered that any inconsistency is of minor significance.

Ministerial Direction	Relevance	Implications
		The Director General's opinion is sought, that the inconsistency is of minor significance. It is envisaged that a future development will be able to be constructed on the site that complies with Council's floodplain and sea level rise requirements.
5.1- Implementation of Regional Strategies	Aims to give legal effect to the vision, land use strategy, policies, outcomes, and actions contained in regional strategies. The direction requires a draft amendment to be consistent with the relevant State strategy that applies to the Local Government Area.	The proposal is not of a scale to be specifically identified in the Lower Hunter Regional Strategy. However, the site is located within an identified existing urban area, and as growth in the region occurs, the proposal will provide some employment opportunities, during any development construction on the site. This in turn will support increased use of local infrastructure and services.
6.1 – Approval and Referral Requirements	Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development. Seeks to minimise a draft LEP from requiring concurrence from, or referral to, a Minister or a public authority unless approval is obtained from the relevant Minister or public authority concerned. Also restricts the ability of a Council to identify development as designated development without the Director General's agreement.	The draft amendment will not introduce any concurrence mechanism.

C. Environmental, social and economic impact

1. 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?

Preliminary investigations indicate that there is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats exist on the site for the proposed amendment.

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

The subject land has been used as a Marine workshop for some 30 years. There are some examples of contamination on the site but appear to be minimal and affect only certain areas of the site. Some minor oil spills within containment areas are evident.

It is not anticipated that there will be other significant environmental effects as a result of the proposal however; based on site observations and from an analysis of the relevant SEPPS, Ministerial 117 Directions, NSW Sea Level Rise Policy Statement (2009) sea level rise planning benchmarks; and Council's Policy on Waterway Flooding and Tidal Inundation the following is relevant:

- A phase 1 Contamination Site Investigation would need to be undertaken at the DA stage, and based on the findings, a Remedial Action Plan may be required prior to future development of the site.
- An investigation of the flooding characteristics and any proposed amelioration of the sites, will be required at the development application stage as a component of any future development.

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

The proposal will compliment and support the ongoing urban infill of land for residential purposes as growth continues in the region, and will provide employment opportunities to the local community during the construction phase of the development. A social impact assessment may be required at the DA stage prior to any development on the site.

Under the LMLEP 2004, a Heritage assessment and heritage management document may be necessary to support any future development of the land. Under draft LMLEP 2012, part of the subject land falls within the Lake Macquarie Sensitive Aboriginal Cultural Landscape. As such, an Aboriginal Heritage Impact Statement may be necessary to support the proposal prior to submission of a DA.

D. State and Commonwealth interests

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

Consultation will need to be undertaken with service authorities to determine that the land can be adequately serviced by connecting to existing or proposed infrastructure. Given the location of the existing development and the adjoining residential zone, it is expected that there is sufficient capacity to accommodate any demand generated by the proposed development of the subject land.

An assessment of the existing transport network (road, public transport, pedestrian and cycling) indicates that all have sufficient capacity to accommodate a change in zone and subsequent redevelopment of the site.

Council has assessed the potential impacts of flooding and inundation on road and drainage infrastructure. These potential impacts have been incorporated into the management of council's forward capital works programmes.

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

There has not been any consultation with State Agencies undertaken to date.

Part 4 –Mapping

Figure 1 - Subject Land - Locality Map

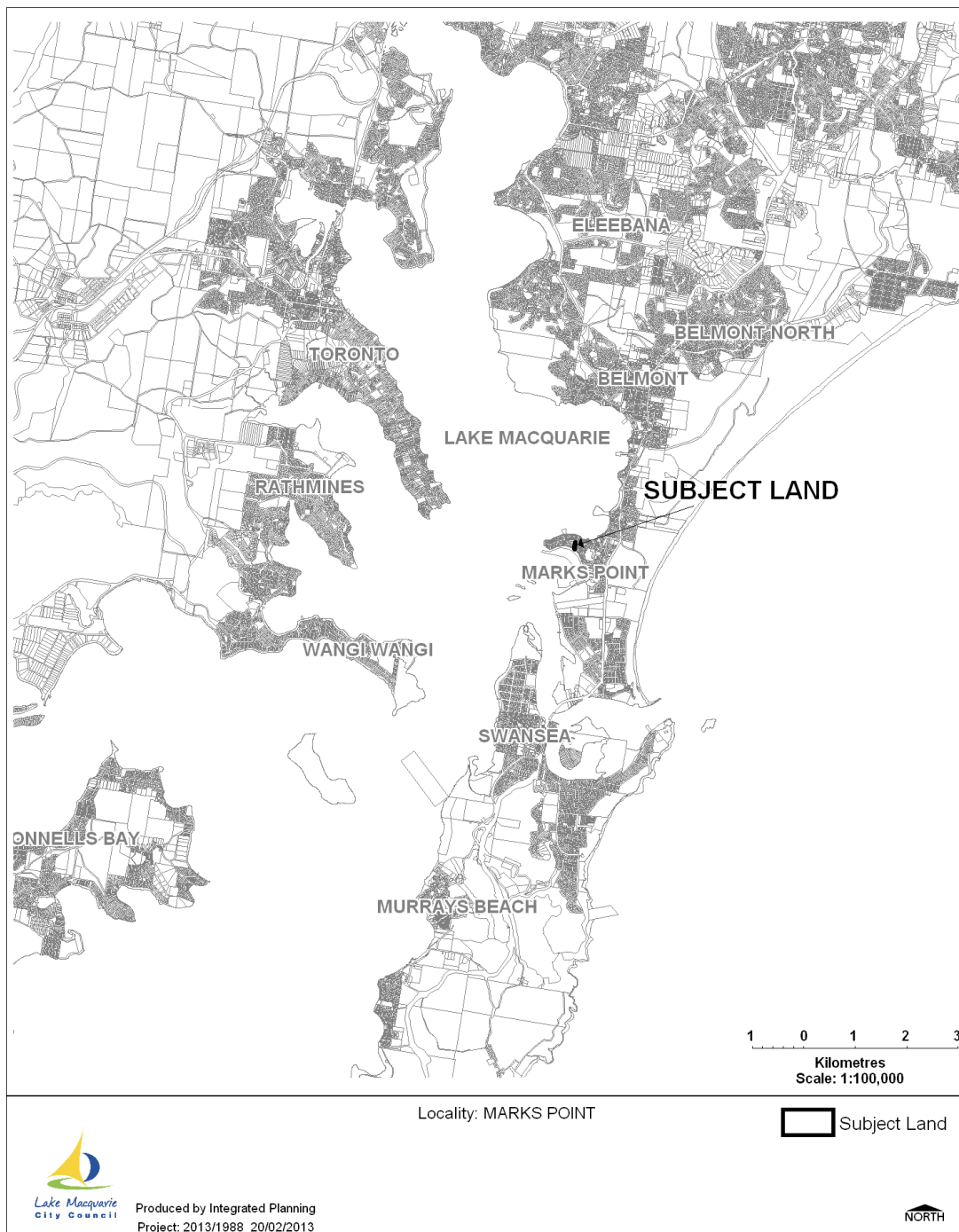


Figure 2 - Aerial Map



Figure 3 – LMLEP 2004 - Existing Zone Map

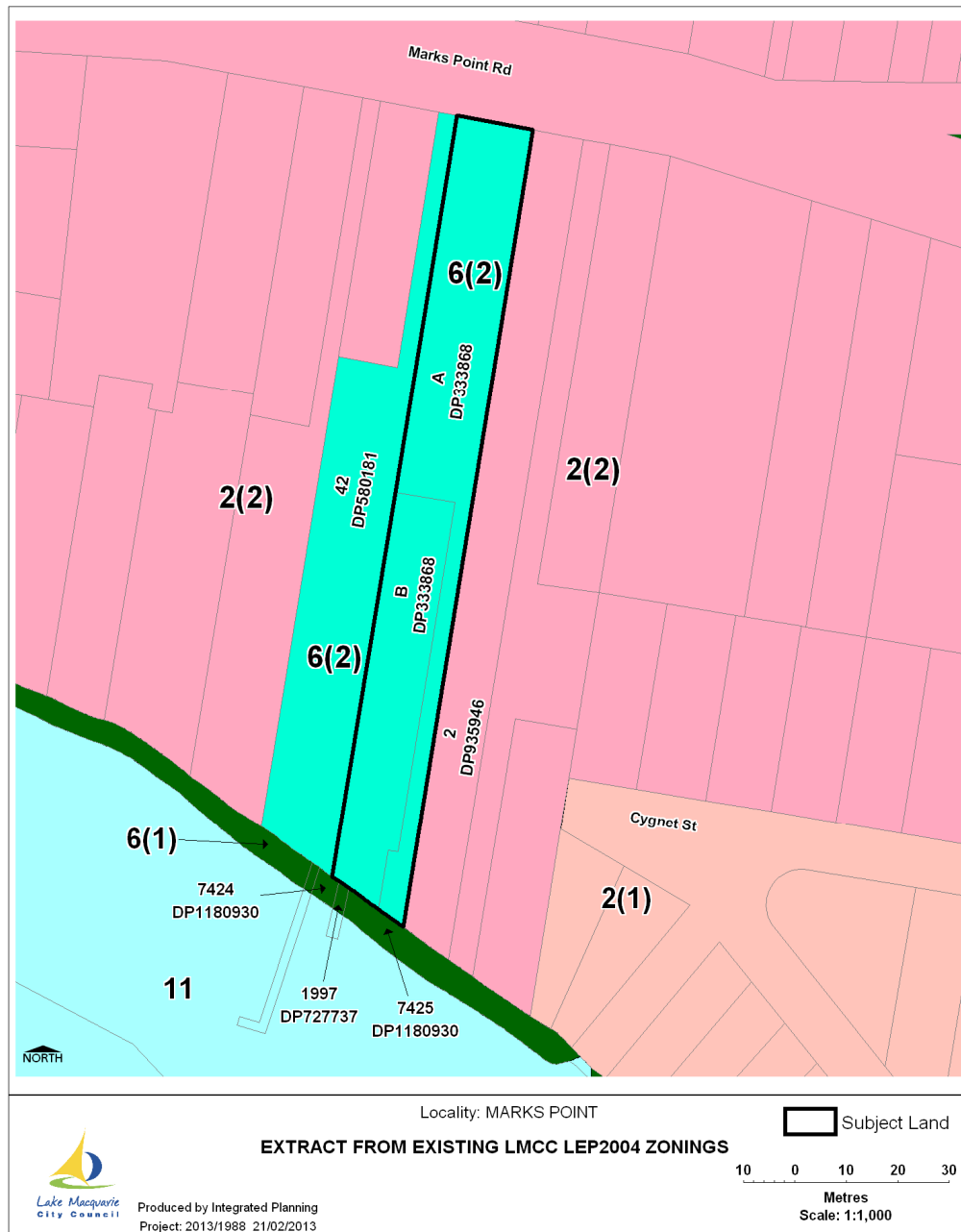


Figure 4 - Draft LMLEP 2012 Zone Map



Figure 5 - Proposed Instrument Map

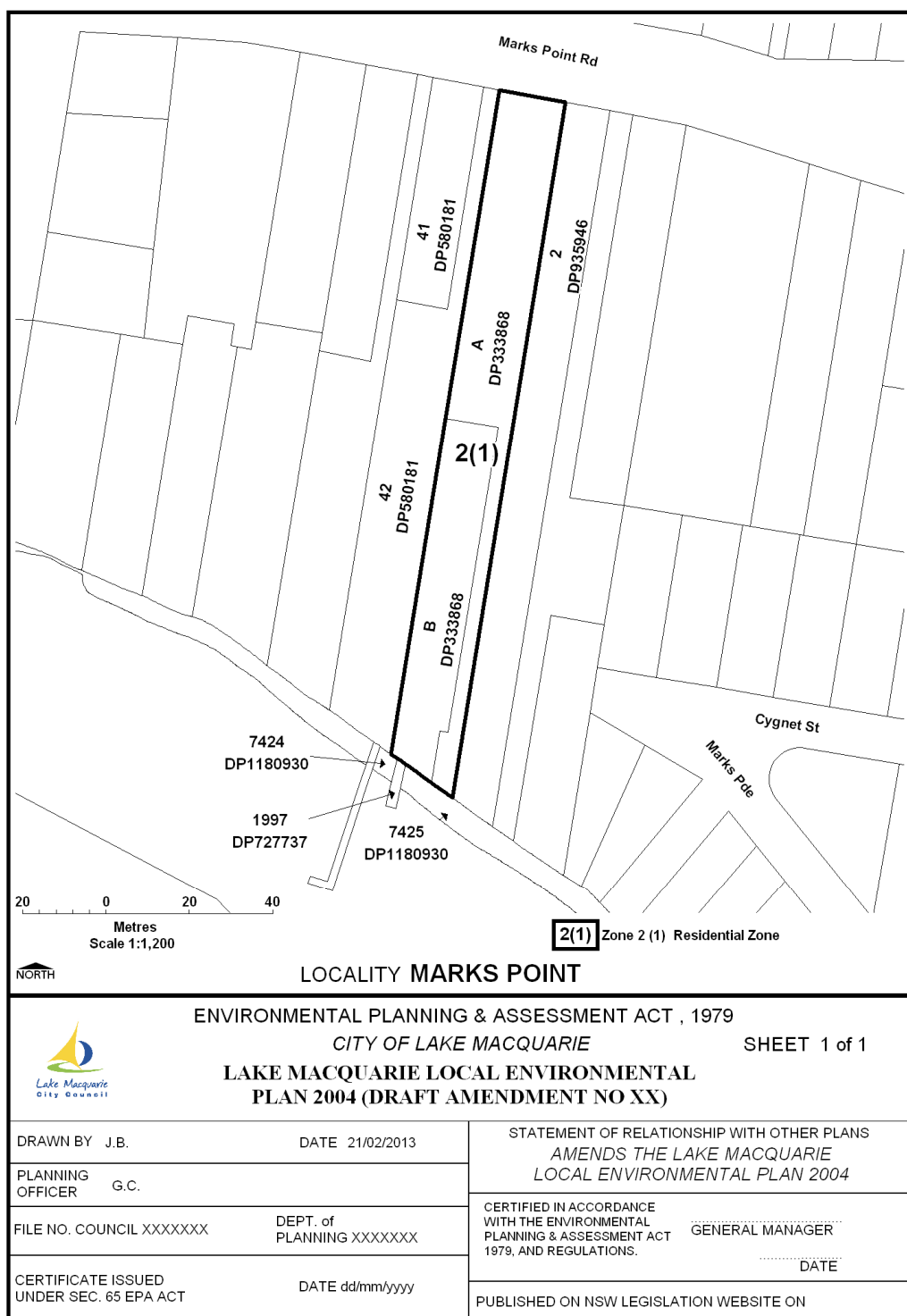
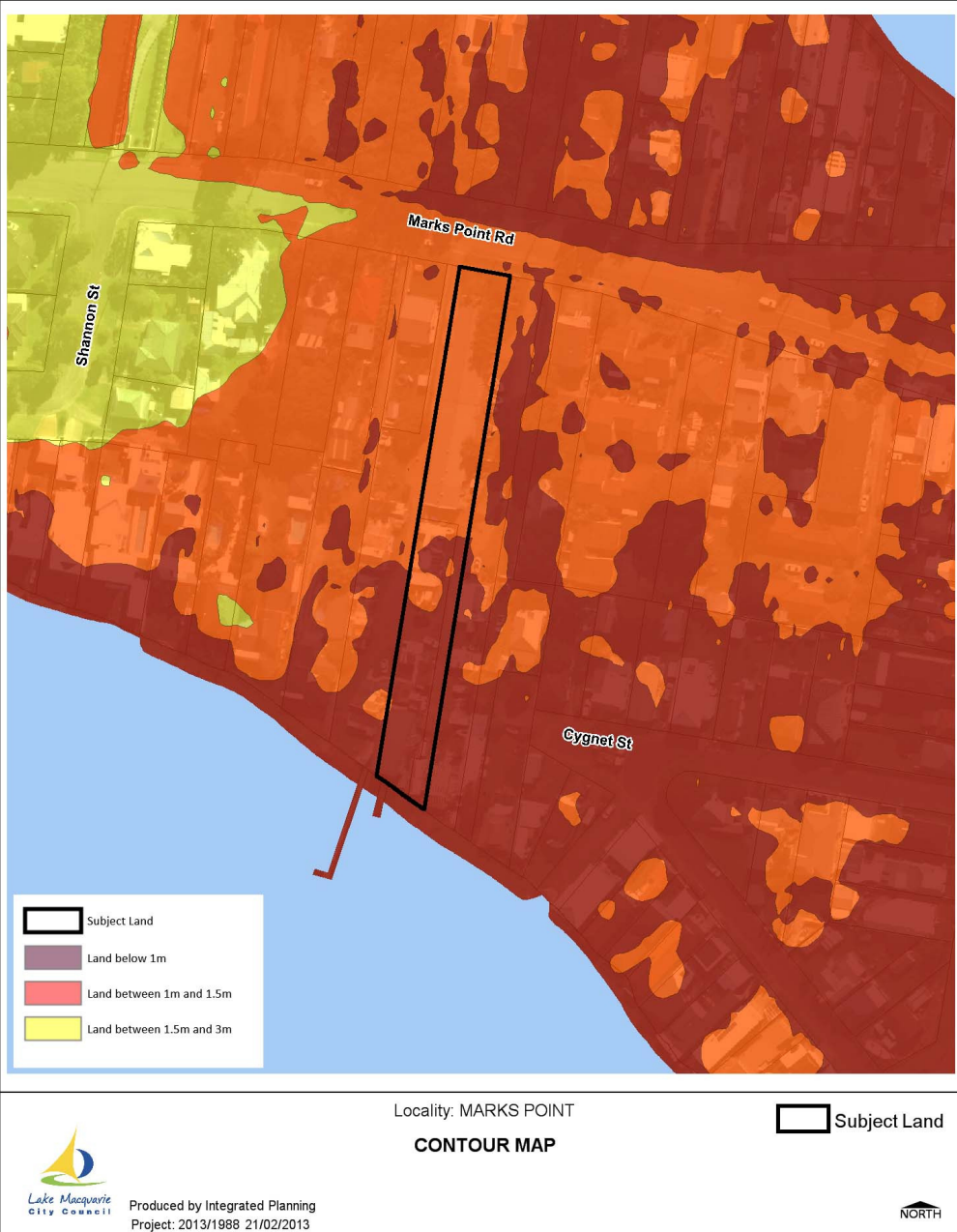


Figure 6 - Flood Prone - Land Contour Map



Part 5 – Details of Community Consultation

There has been no previous public consultation regarding this planning proposal. Council's preference is for a minimum public exhibition period of 28 days once the Panel has provided its certificate to exhibit.

Relevant Agencies to be consulted would include: Electricity providers; Telco's; Hunter Water Corporation, Mines Subsidence Board; Minerals, Roads and Maritime Services; OEH (Heritage); Ministry of Transport; Local Aboriginal Land Council; Traditional Aboriginal Owners Corporation; Hunter New England; NSW Education and Training Department.

Part 6 – Project Timeline

Anticipated commencement date (date of Gateway determination)	June 2013
Anticipated timeframe for the completion of required studies	3 months – September 2013
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	- pre exhibition 28 days agency consultation response - post exhibition as required by Gateway?
Commencement and completion dates for public exhibition period	October to November 2013 - 28 days
Dates for public hearing (if required)	Anticipate no requirement at this stage
Timeframe for consideration of submissions	1 month – December 2013
Legal Drafting of the LEP	4-6 weeks? – February/March
Timeframe for the consideration of a proposal post exhibition	2 months – March/May 2014 (includes reporting to Council to endorse/reject draft)
Anticipated date RPA will make the plan (if delegated), and	2014 – May/June
Anticipated date RPA will forward to the department for notification (if delegated)	June/July 2014