

**Special Report of the Director City Strategy to Ordinary Council
Meeting
22 April 2013**

13SP029 Planning Proposal - Minor Zone Boundary Adjustment - 13A Main Road, Boolaroo

Council Ref: RZ/4/2013 - D02867081
Report By: Strategic Landuse Planner - Angel Troke

Précis:

Council has received a request to amend Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004) to undertake a minor zone boundary adjustment on the former Pasminco Cockle Creek Smelter site. This zone adjustment is needed due to a revised road alignment for the proposed extension of Munibung Road and roundabout intersection, which has resulted in small sections of land on either side of the road with an inappropriate zone.

A draft Planning Proposal has been prepared following consultation with internal staff.

This report seeks a resolution of Council to support preparation of the LEP amendment and to forward the draft Planning Proposal to the Department of Planning and Infrastructure (DoPI) for a Gateway determination. The Gateway determination will set the public exhibition period, consultation requirements, and timeframes for finalisation of the amendment.

Recommendation:

Council:

- A. Supports the preparation of an LEP amendment to make a minor zone boundary adjustment at the former Pasminco Cockle Creek Smelter site.
- B. Requests a Gateway determination from the Department of Planning and Infrastructure pursuant to the *Environmental Planning and Assessment Act (EP&A Act) 1979*, in relation to the Planning Proposal in Attachment 1.
- C. Requests the use of delegations in respect of the plan making function under section 59 of the *EP&A Act 1979* for the Planning Proposal.
- D. Enters into a Local Environmental Plan (LEP) Amendment Agreement with the proponents, following receipt of the Gateway determination.
- E. Places the Planning Proposal on exhibition, if required and as directed by the Gateway determination.
- F. Notifies affected landowners of the Gateway determination and public exhibition period if required.

Background:

The former Pasminco Cockle Creek Smelter site at Boolaroo was rezoned in two stages in 2010 and 2011 respectively. The former Pasminco site was rezoned from a 4(1) Industrial (General) zone to a mixture of residential, employment and conservation zones (09STRAT08 and 11STRAT03).

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Since the rezoning of the former Pasminco Cockle Creek Smelter site, detailed subdivision and road design has occurred on the proposed extension of Munibung Road and its intersection with TC Frith Avenue and Main Road, Boolaroo. The detailed design for the Munibung Road extension and intersection have resulted in adjustments to lot and road boundaries that do not align with the zone boundaries. The intention of the original zoning plan was for Munibung Road to be the boundary between the residential and employment zones. An amendment is needed to allow these proposed road and lot boundaries to align and for Munibung Road to continue to separate these residential and employment areas.

Proposal:

It is proposed that Council resolves to prepare and support an amendment to LMLEP 2004 and draft LMLEP 2012 to undertake the minor zone boundary adjustment. The planning proposal seeks to:

- Amend LMLEP 2004 to rezone small sections of land from 2(2) Residential (Urban Living) and B4 Mixed Use zone to 3(2) Urban Centre (Support) zone. A small section of land will also be rezoned from 3(2) Urban Centre (Support) zone to 2(2) Residential (Urban Living).
- Amend draft LMLEP 2012 to rezone small sections of land from R3 Medium Density Residential zone to B4 Mixed Use zone and rezone another small area of land from B4 Mixed Use zone to R3 Medium Density Residential zone.

The amendment is consistent with the intention of the original zone boundary, considered very minor in nature and will not have any significant adverse impact on the environment or adjoining land. Therefore, Council will be seeking concurrence from the DoPI for the amendment to proceed in accordance with s73A of the *Environmental Planning and Assessment Act 1979*, which allows for an expeditious LEP amendment process.

Consultation:

Council's Rezoning Assessment Panel has considered the proposal and no issues were raised as the amendment is a minor zone boundary adjustment and consistent with the intended redevelopment of the site.

Given that the proposal is a minor zone boundary adjustment with no impacts on the environment or adjoining land, it is recommended that it proceeds as an expedited amendment under s73A of the *EP&A Act 1979* and no government agency or community consultation is recommended. However, Council will undertake consultation requirements in accordance with the Gateway determination.

Implications:

Policy Implications:

Implications relating to Council's Lifestyle 2030 Strategy, State Planning Policies, and Guidelines are detailed in the Planning Proposal included as Attachment 1 to this report. The Planning Proposal is generally consistent with all relevant policies and planning strategies.

Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004)

The proposal seeks to rezone small areas of land from 2(2) Residential (Urban Living) and B4 Mixed Use to 3(2) Urban Centre (Support) and from 3(2) Urban Centre (Support) zone

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to 2(2) Residential (Urban Living) to ensure the zone boundary is consistent with the alignment of the designed road boundary and avoid permissibility issues associated with future development applications.

Draft Lake Macquarie Local Environmental Plan 2012 (draft LMLEP 2012)

It is currently expected that draft LMLEP 2012 will be finalised late 2013. Therefore, the Planning Proposal in Attachment 1 considers both LMLEP 2004 and the draft LMLEP 2012.

Under draft LMLEP 2012, the planning proposal would seek to amend a small section of R3 Medium Density Residential zone to B4 Mixed Use and a small area of R3 Medium Density Residential to B4 Mixed Use zone to ensure lot and road boundaries align.

Lifestyle 2030 Strategy

Council's Lifestyle 2030 Strategy identifies the following for the former Pasminco site:

- The redevelopment of the former Pasminco Cockle Creek Smelter site will provide an opportunity for large scale urban redevelopment.
- The redevelopment of the Pasminco site will provide additional employment land.

This Planning Proposal is consistent with the provisions of Council's Lifestyle 2030 Strategy.

Lake Macquarie Development Control Plan - Pasminco Area Plan

The Pasminco Area Plan contains development controls relating to the future development of the Pasminco site. The controls within the Pasminco Area Plan will need to be considered when a development application is lodged for the site.

Lake Macquarie Community Plan 2008 - 2018

The 10 Year Community Plan identifies that one of the priorities is to increase employment opportunities and investment within the City. The proposal is considered consistent with this priority.

Policy for Managing Contaminated or Potentially Contaminated Land

The former Pasminco site was granted remediation approval under Part 3A of the *Environmental Planning and Assessment Act 1979* and remediation works have occurred on the site. The former Pasminco site is being remediated in stages. The areas subject to this amendment are nearing the completion stage of remediation works. Areas subject to this planning proposal will not be developed until remediation is complete and a Site Audit Statement is issued stating that the site has been remediated to allow the intended residential and business uses.

Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals

The proposal has been assessed against the provisions of Council's Biodiversity Planning Policy and Guidelines for LEP Rezoning Proposals. The site is devoid of vegetation due to previous heavy industrial uses and remediation of the site and no implications on biodiversity are anticipated.

Lower Hunter Regional Strategy

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The Lower Hunter Regional Strategy identifies the site as employment land given its previous industrial use. The proposal is for a minor zone boundary adjustment, however will facilitate employment uses which will assist fulfilling the employment targets of the Lower Hunter Regional Strategy.

Lower Hunter Regional Conservation Plan

The Lower Hunter Regional Conservation Plan outlines biodiversity principles and requirements for the retention and improvement of biodiversity within the region. The subject site is heavily disturbed and devoid of vegetation and no biodiversity impacts are anticipated.

State Environmental Planning Policies (SEPPs)

The proposal has been assessed as consistent with the provisions of relevant SEPPs. This assessment is included in the Planning Proposal in Attachment 1.

Section 117 Ministerial Directions

The proposal has been assessed against relevant Ministerial Directions and included in the Planning Proposal in Attachment 1. In summary, the proposal is consistent with relevant Ministerial Directions except for a minor inconsistency with Direction 1.1 - Business and Industrial Zones and Direction 3.1 – Residential Zones because very small portions of residential (513m²) and business (5,114m²) zoned land are to be rezoned in the boundary adjustment. It is considered that the inconsistency with these two directions is minor due to the small areas of land involved. Council will seek the concurrence of the Director General of the DoPI for these minor inconsistencies.

Environmental Implications:

The former Pasminco site has a long history of previous use for heavy industrial purposes. The site has been subject to remediation in accordance with the Part 3A approval which has included the removal of vegetation on the site and the removal of soil to a certain depth to facilitate remediation. Given the disturbance to the site, there is unlikely to be any threatened species, populations or ecological communities on the site.

Social Implications:

The zone boundary adjustment is a minor amendment to the LMLEP 2004 and it is not anticipated to have any social implications. Development controls within the Pasminco Area Plan will ensure that any social impacts of future development of the site are considered.

Financial Implications:

There will be no specific financial implications for Council apart from staff resources being involved in the processing of the LEP amendment in accordance with Council's LEP amendment process. The applicant will be required to enter into a standard LEP Amendment Agreement with Council following submission of the Planning Proposal to the Gateway. Under this Agreement, relevant rezoning fees will be paid by the proponent to cover Council resources.

Risk and Insurance Implications:

The preparation of an amendment to LMLEP 2004 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be

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minimised through following the process as established by the *EP&A Act 1979* and *Environmental Planning and Assessment Regulation 2000* as well as Council procedure.

Options:

1. Council resolves to prepare and support the Planning Proposal, and to request a Gateway determination. This will ensure that the zone and proposed lot boundaries align and allow development to proceed on the subject site. This is the recommended option.
2. Council does not support the Planning Proposal and ceases the LEP amendment process. This is not the preferred option as this will leave an inconsistency in zone and lot boundaries and may result in problems with the determination of future development applications, which may delay the delivery of employment opportunities and investment in Lake Macquarie.

Conclusion:

Integrated Planning has undertaken internal consultation and determined that the minor zone boundary adjustment has merit. The proposal will facilitate consistent zone and lot boundaries to allow for the realignment of the proposed Munibung Road extension and avoid problems with determining future development applications for the land. It is recommended that Council support the preparation of an amendment to LMLEP 2004 as set out in the Planning Proposal in Attachment 1.

Manager - Integrated Planning - Sharon Pope

Attachments:

1. Attachment 1 to Planning Proposal - Minor Zone Boundary Adjustment - 13A Main Road Boolaroo - report to Council on 22 April 2013 D02890466