

Lake Macquarie LEP 2004 and Draft Lake Macquarie LEP 2013 – Amendment No. 84 – Killingworth paper subdivision.

Proposal Title : **Lake Macquarie LEP 2004 and Draft Lake Macquarie LEP 2013 – Amendment No. 84 – Killingworth paper subdivision.**

Proposal Summary : **The planning proposal seeks to rezone land including a paper subdivision from an investigation zone to residential and conservation zones.**

PP Number : **PP_2013_LAKEM_014_00** Dop File No : **13/14875**

Proposal Details

Date Planning Proposal Received : **13-Sep-2013** LGA covered : **Lake Macquarie**

Region : **Hunter** RPA : **Lake Macquarie City Council**

State Electorate : **LAKE MACQUARIE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **various streets**

Suburb : **Killingworth** City : **Lake Macquarie** Postcode : **2278**

Land Parcel : **various lots within DP 4339 (see attached document containing property details)**

DoP Planning Officer Contact Details

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RPA Contact Details

Contact Name : **Karen Partington**

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Lower Hunter Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	6.70	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	35	No. of Dwellings (where relevant) :	35
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **As the Lake Macquarie Standard Instrument LEP has been submitted to the Department under Section 68 and Council estimates that the planning proposal will be completed by April 2014, the report refers to the Standard Instrument zones throughout the report to be concise. However, it is recommended that the Gateway require the exhibition refer to amending both the existing and draft LEPs.**

The proposal was previously submitted as an LEP amendment in 2007. Council received a section 54 and a number of studies were required including an LES. The LEP amendment then stalled due to funding constraints and conflicting information regarding biodiversity. The LEP amendment was not transitioned into a Planning Proposal in 2011 when the changes to Part 3 took effect and therefore it lapsed.

Council is the owner of 57 of the 86 paper subdivision lots subject to the planning proposal and the remaining 29 lots are privately owned. Five of the paper subdivision lots already contain dwellings. Of the lots being zoned to E2, 43 are owned by Council and 8 are privately owned.

Of the total 86 lots, there are 33 lots that require reclassification. The planning proposal seeks to reclassify all existing lots classified as community in the paper subdivision.

23 lots to be reclassified are within the existing 6(1)Open Space zoned land, i.e. outside the area proposed for rezoning.

The 23 lots to remain 6(1) Open Space will be investigated to provide a potential future biodiversity offset. It is more appropriate that these lots become operational in order to close roads and amalgamate lots to secure the biodiversity offset as one parcel. Similarly with the large parcel of 6(1) zone land, it is unknown as yet whether part of this site could be utilised for offsetting or for infrastructure purposes to service the future development areas.

Council is currently preparing a draft development contributions plan for the Glendale catchment (which includes Killingworth) which will determine whether all of the 6(1) Open Space land is still required.

The remaining 10 lots to be reclassified are also being rezoned.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment : The intention is to rezone an existing paper subdivision from 10 Investigation to R2 Low Density Residential and E2 Environmental Conservation.

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

Is an explanation of provisions provided? Yes

Comment : The explanation of provisions is adequate as it provides the parameters to amend the existing and future Lake Macquarie LEPS.

LAKE MACQUARIE LEP 2004

The proposal involves rezoning a total of 15.33 ha:

- 10 Investigation to 2(1) Residential – 6.7 ha
- 10 Investigation to 7(2) Conservation (Secondary) – 8.6 ha

Clause 42B (2) – Environmentally Sensitive Land
Include Amendment No 84 under the 'The map' definition.

Environmental Sensitive Land Map - include proposed 2(1) Residential zoned land.

Schedule 3 Classification and reclassification of land to discharge interests -
All interests must remain on the titles. All lands are affected by Reservations and Conditions in the Crown Grant and multiple Rights to Mine.

DRAFT LAKE MACQUARIE STANDARD INSTRUMENT LEP 2013

The proposal involves rezoning:

- RU6 Transition to R2 low density residential 6.7 ha
- RU6 Transition to E2 Environmental Conservation 8.6 ha

Standard Instrument maps:

Lot size map

- Land to be zoned R2 from 200 ha to 450 m2
- Land to be zoned E2 from 200 ha to 40 ha

Height of building map

- Land to zoned E2 8.5 m to 5.5 m

Environmental Sensitive Land Map

- Include proposed 2(1) Residential zoned land.

PART 6 – URBAN RELEASE AREAS

It is recommended that the site be identified as an Urban Release Area in clause 6.4

SEPP (Exempt & Complying Development Code) 2008

The planning proposal incorrectly indicates that it is to amend the Code SEPP. It is recommended that the Gateway will be conditioned to remove this part of the planning proposal.

By identifying the land to be zoned residential in the Environmental Sensitive Land map, this will exclude the land from the Code SEPP.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.3 Mining, Petroleum Production and Extractive Industries

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Infrastructure) 2007

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

S117 DIRECTIONS

Direction 1.3 Mining, Petroleum Production and Extractive Industries - Direction 1.3 applies to the planning proposal as the proposal may have the effect of prohibiting mining. Therefore it is necessary to consult with the Director General of the Department of Trade & Investment, Regional Infrastructure & Services Division of Resources and Energy (T&I) and seek advice on land uses in conflict with mining.

Any advice from T&I should be included in the community consultation. Therefore until consultation with T&I has occurred it cannot be determined if the consistency is of minor significance. It is recommended that this aspect of the proposal be considered by the Director General Planning & Infrastructure prior to making the plan. It is recognised that consultation occurred with DPI Minerals in 2008, however for the purpose of addressing Direction 1.3 for the current planning proposal and given that the status of surrounding mines has changed, it is recommended that T&I be re-consulted.

Direction 2.1 – Environmental Protection – the planning proposal is inconsistent with Direction 2.1 as it does not protect all vegetation across the site. It is recommended that consultation occur with OEH and advice be incorporated in the planning proposal.

Direction 2.3 – Heritage Conservation – the planning proposal contains provisions that conserve heritage items. The LES recommends avoiding where possible Aboriginal and European sites however this may not be possible through development. Therefore it is recommended to consult with the LALC and OEH on this matter and that the potential inconsistency be considered by the Director General Planning & Infrastructure prior to making the plan.

Direction 3.4 - Integrating Land Use and Transport – the planning proposal is

inconsistent with Direction 3.4 as it is not comply with the aims of Improving Transport Choice as the site is isolated from public transport and will be a car dependent development. It is considered justified and of minor significance in this instance as it adjoins an existing established residential area and resolves a problematic paper subdivision. The site is approximately 4.5 km to the nearest F3 interchange and 8 km to a major retail complex. Therefore the inconsistency is considered of minor significance and the Director General's agreement to the inconsistency is requested in this matter.

Direction 4.2 Mine Subsidence and Unstable Land – the site is in the Lake Macquarie Mine Subsidence District and therefore it is a requirement to consult with the Mine Subsidence Board. It is recognised that the MSB was consulted under the previous LEP Amendment in 2008 however it is recommended that this occur for the current planning proposal to ensure that Direction 4.2 is properly addressed. It is necessary for any advice to form part of the community consultation.

Direction 4.4 Planning for Bushfire – Direction 4.4 has not been considered in the planning proposal. However, it is noted that Council received correspondence from RFS in 2008 regarding this matter. It is recommended that consultation re-occur with the current planning proposal to ensure consistency with Direction 4.4.

Direction 5.1- Implementation of Regional Strategies – the planning proposal is consistent with the intent of the strategy. It is not however identified as a proposed urban area due the small scale of the site. It is not in the Green Corridor but rather is identified as rural and resource land. It is consistent with the Sustainability Criteria.

STATE POLICIES

SEPP 19 – Bushland in Urban Areas - requires Council to have regard to the general and specific aims of the Policy, and give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland.

The LES indicates the E2 zoned area will provide a continued link with the natural heritage and the EEC will be protected. However, there will be some loss of valued vegetation on both the eastern and western sides of the proposed residential zone.

The loss of bushland could be agreed to on the basis of a satisfactory biodiversity offset, although consultation with OEH should occur to confirm that Council's approach is appropriate.

SEPP 44 – Koala Habitat - potential Koala Habitat was identified on site and therefore under the SEPP core habitat assessment is required. Core Habitat Assessment was undertaken and found that the study area can be considered potential Koala habitat, however the lack of evidence of koalas suggest that it does not support core Koala habitat according to the SEPP 44 definition.

SEPP 55 – A Preliminary Contaminated Site Investigation (PCSI) was prepared as part of the LES. It is recommended additional PCSI be carried out at the time of proposed development including soil testing to assess impacts of potential illegal dumping in the interim period.

SEPP (Infrastructure) – consultation with RMS is required at the DA stage. It is recommended that the site be identified as an Urban Release Area as it adjoins existing residential land.

SEPP Mining , Petroleum Production and Extractive Industries) 2007 – the site is under a mining lease area. Consultation is required with T&I under s117 Direction 1.3 which will address any concerns the Department may have regarding the aims of the Policy.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The maps provided are adequate for community consultation.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed a 28 day consultation period and it is considered that this consultation period is appropriate as the planning proposal does not meet the definition of a low impact due to the loss of vegetation, the existing paper subdivision and council's land ownership.**

Additional Director General's requirements

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

If Yes, reasons : **PROJECT TIMELINE**

Council's timeline nominates the Planning Proposal's completion by the end of April 2014, approximately seven (7) months after the Gateway Determination. This is considered ambitious given the consultation required and the need for a biodiversity offset.

Also a public hearing is not proposed in the project timeline but it is considered that this will be necessary for the reclassification of land.

A twelve (12) month completion timeframe is recommended so as to provide an adequate buffer should unexpected delays occur.

DELEGATION AUTHORISATION

Council also requests the use of delegations in respect of the Minister for Planning & Infrastructure's plan making function under s59 of the EP&A Act for this planning proposal.

Although there is council owned land involved, the Governor's approval is not required for the reclassification as interests are not being discharged. Therefore delegation is recommended in this instance.

Overall adequacy of the proposal

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

If No, comment : **The Planning Proposal should proceed.**

Proposal Assessment

Principal LEP:

Due Date : **December 2013**

Comments in relation to Principal LEP : **The draft comprehensive Lake Macquarie LEP 2013 is expected to be completed later in 2013.**

Assessment Criteria

Need for planning proposal : **A planning proposal is considered the most effective and timely method available to achieve the objectives and intended outcomes of the proposal to resolve the paper**

subdivision issue.

Community Benefit

There is community benefit in rezoning the land for residential purposes given that there is adequate services can be easily brought to the site.

The proposal will alleviate issues regarding the existing paper subdivision and result in the reclassification and possible sale of Council owned land. It will provide additional population to support the Killingworth community and create demand for additional services including child care and access to recreational facilities and will contribute to the sustainability of the neighbouring Barnsley Public School.

The planning proposal will result in the loss of valued vegetation but will also protect vegetation through a biodiversity offset. It is therefore considered the proposal will result in a net community benefit demonstrating a need for the planning proposal.

Consistency with
strategic planning
framework :

EP&A ACT 1979

- SCHEDULE 5 PAPER SUBDIVISIONS

Schedule 5 sets out the requirements for subdivision orders required to facilitate the development of a paper subdivision. This is not a matter for the planning proposal but is required to be activated by a development application to subdivide the land and carry out subdivision works.

LOWER HUNTER REGIONAL STRATEGY 2006 (LHRS)

The site is identified as rural and resource land and outside designated areas of the Strategy. OEH requested the planning proposal address the Sustainability Criteria.

Sustainability Criteria

The planning proposal is consistent with the criteria although there is limited access to public transport and equitable access to facilities. The risks facing the planning proposal relating to bushfire hazard can be ameliorated through the application of Planning for Bushfire Protection 2006. There is quantifiable loss of native vegetation however these impacts should be considered in light of the benefits to the community such as strengthening the small population and resolving of a long standing paper subdivision issue.

The planning proposal contributes to the LHRS Lake Macquarie targets which seeks to attain 10,600 jobs and 7,200 dwellings.

LIFESTYLE 2030 STRATEGY

The local strategy identifies Killingworth as a village supporting Wallsend and Holmesville local centres.

As the site is zoned 10 Investigation this indicates Council's intention to investigate its opportunities. The subject site is identified as an 'LMCC Investigation Area' requiring analysis of environmental, social and economic values prior to rezoning to urban use. It recommends using biodiversity offsets to optimise the development footprint.

NEWCASTLE – LAKE MACQUARIE WESTERN CORRIDOR PLANNING STRATEGY

The local planning strategy identifies planning principles, development criteria and infrastructure to implement actions in LHRS for the corridor which includes Killingworth. It facilitates housing choices, conservation outcomes and provides open space. It identifies Killingworth as residential investigation.

Environmental social
economic impacts :

ENVIRONMENTAL IMPACTS:

Killingworth Biodiversity Review 2010

Hinterland Spotted Gum – Red Ironbark Forest (EEC) is identified on the site.

The EEC is to be zoned E2 however some of the high ecological value land and parts contain habitat for threatened flora and fauna species are to be zoned R2. This is to be offset subject to consultation with OEH. This approach is considered adequate because;

- The EEC vegetation is to be protected as is 75% of hollow bearing trees
- 1.5 ha of high value land will be cleared and this is to be offset
- It resolves the subdivided land and adjoins existing residential
- There is demand for affordable housing in Lake Macquarie
- Bushfire APZ can be managed outside EECs
- A DCP will be prepared for the site.

Biodiversity Offsetting - The Biodiversity Banking Offsets Scheme is recommended by Council. This approach requires the offset to be measured using ecosystem credits using the BioBanking Assessment Methodology (BBAM). The preferred option requires 415 Ecosystem Credits obtained through 46 hectares of suitably quality vegetation to offset the loss.

Hydrology, Drainage, Flooding - The watercourse traveling through the site is a tributary of Cockle Creek however the land is not flood affected.

Bushfire - A bushfire study was carried out and an APZ of 20 - 35 m is recommended. Consultation is required with RFS under S117 Direction 4.4.

Land slip - An assessment of the slope stability was carried out and it found that the site is underlain by shale and siltstone. The assessment found that soil slide or soil flow landslide was unlikely and therefore there was a low risk of instability with minor impact on property.

Contamination – A Preliminary Contaminated Site Investigation undertaken and illegal dumping is noted as a visible sign of contamination. Natural soils do not contain contamination. It is recommended that further investigation of illegal dumping be carried out prior to determination of future development consent.

SOCIAL IMPACTS:

A Social and Economic Impact Assessment (SEIA) was undertaken as part of the LES. The average regional household size of 2.53 would equate to increased population of approximately 90 people in the Killingworth area. Based on current age distribution in Lake Macquarie, it is recommended that more Child Care services be provided. Child care services are permitted in the R2 zone but additional services would be subject to demand. Advice from DET indicated that there is capacity at Barnsley Primary School to accommodate 60 more children.

Visual Impact Assessment –loss of vegetation will impact on the visual outlook of Killingworth but essentially the settlement will remain surrounded by bushland.

Archaeology – A Cultural Heritage Assessment (CHA) identified 5 Aboriginal sites, two in the R2 zone. If these sites cannot be avoided as a result of development then an Aboriginal Heritage Impact Permit (AHIP) is required. Consultation with OEH is required regarding Aboriginal Cultural Heritage. It is recommended that consultation also occur with Awabakal LALC as the status of the Aboriginal sites is determined.

There are two European sites identified in the R2 zone. It may not be possible to avoid these items which will require a permit to remove. Consultation with OEH is required in this matter.

Transport – A Traffic Impact Study was prepared on the basis of development of 78 lots (initial figures before protection of EEC land) . It investigated if the existing local road network had capacity to accommodate increased traffic volumes. It was found that it had sufficient capacity to accommodate increased traffic and nominated intersection could accommodate increased traffic flows.

NOISE, DUST AND VIBRATION

At its closest point Killingworth is approximately 600 metres from an existing open cut mine. OEH considers there will be negligent land use conflict associated with noise, air and odour.

Westside Mine is 600 metres to Killingworth's eastern edge. The mine formally notified Department of Trade & Investment that it completed mining coal from the open cut in February 2012.

Another mine, West Wallsend pit top, is approximately 1 km from Killingworth's eastern edge. This operation is ongoing as coal is brought to the surface here and trucked off the site eastward, away from Killingworth. It is considered there will be some impact by way of dust and noise from the pit top however this is an ongoing operation and the existing community of Killingworth is currently affected. The proposed infill R2 land is further way than the existing developed eastern edge and therefore will experience less affects.

ECONOMIC IMPACTS:

Servicing – A Servicing Assessment was carried out and additional water capacity can be provided by duplicating the service main to Killingworth. Hunter Water Corporation advised that these works are scheduled for completion by 2015.

Waste Water Treatment – capacity can be provided for the lots via Edgeworth WWTW however, 20 lots on the south-western portion of the site will require a pump station due to low topography.

Energy – There is no surplus capacity available and an upgrade to the electricity feeder is required. An upgrade is scheduled in 2013.

Augmentation of services will be undertaken by developer in conjunction with service providers.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - 56(2) (d) :	Office of Environment and Heritage Hunter Water Corporation Mine Subsidence Board NSW Rural Fire Service Other		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **It is considered that the site be identified as an Urban Release Area to ensure satisfactory arrangements are in place for state infrastructure.**

Documents

Document File Name	DocumentType Name	Is Public
Property details.xlsx	Proposal	Yes
Supplementary Information - LMCC LEP Amendment 84 (Killingworth).doc	Proposal	Yes
letter.pdf	Proposal Covering Letter	Yes
2013.09.03 Planning Proposal - Land at Killingworth.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.3 Mining, Petroleum Production and Extractive Industries**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**

Additional Information :

- 1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:**
 - (a) the planning proposal must be made publicly available for 28 days; and**
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).**
- 2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:**
 - Rural Fire Service**
 - Department of Trade & Investment, Regional Infrastructure & Services Division of Resources and Energy**
 - Awabakal Local Aboriginal Land Council**
 - Office of Environment & Heritage**
 - Mine Subsidence Board**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
- 3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any**

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obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

4. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

5. Prior to undertaking public exhibition, Council is to amend the planning proposal to identify the subject site as an Urban Release Area.

6. The planning proposal is to clarify the required provisions under draft LEP 2013 required to protect the land as Environmentally Sensitive Land.

7. Amend the planning proposal to remove the reference to amending SEPP (Exempt & Complying Development Code) 2008.

Supporting Reasons :

1. The planning proposal will resolve an ongoing paper subdivision issue.

2. Additional population will support an existing, adjoining village

3. The development should proceed subject to resolution of a satisfactory biodiversity offset.

4. Although significant work and consultation has been undertaken on this site, additional consultation is recommended to address any changes in circumstances and should not delay the process excessively.

Signature:



Printed Name:

K. O'FLAHERTY

Date:

4/10/2013