

## City Strategy Committee Meeting 1 December 2014

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### 14STRAT046 Adoption of Amendment to Lake Macquarie LEP 2014 - Land at Killingworth

Council Ref: RZ/3/2007 - D07112791  
Report By: Senior Strategic Landuse Planner - Karen Partington

#### Précis:

On 12 August 2013, Council resolved to support the preparation of an Amendment to Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) to rezone land within the Killingworth paper subdivision from 10 Investigation to a combination of residential and conservation zones (13STRAT044). This included a proposal to reclassify Council owned land in the subdivision. Since the resolution, a gateway determination has been obtained from the Department of Planning and Environment, which issued Council with delegations to make the plan and included conditions regarding the public exhibition of the Planning Proposal.

The Planning Proposal was placed on public exhibition for the period 14 July to 12 August 2014. There were four (4) submissions received by government agencies and twelve (12) submissions received by the public.

A public hearing was held on 24 September 2014 to discuss the reclassification of Council owned lots. The independent facilitator's report on the public hearing, is provided at Attachment 5.

Following the consideration of submissions, it is recommended that Council resolves to make the Amendment to LMLEP 2014 under delegation granted by the Minister for Planning.

#### Recommendation:

Council:

- A. Notes the issues raised during the public exhibition and public hearing, and endorses the Planning Proposal to amend *Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)* as contained in Attachment 1.
- B. Makes Lake Macquarie Local Environmental Plan – Land at Killingworth, pursuant to section 59 of the *Environmental Planning and Assessment Act 1979* under delegation as authorised by the Minister for Planning and Environment.
- C. Notifies affected landowners and those who made a submission during the exhibition period of Council's decision.

#### Background:

The Killingworth village was created as a grid pattern "paper" subdivision in 1901. The northern portion of the village was developed with roads and other urban infrastructure, however the southern portion was not, and remains heavily vegetated.

In May 2007, Council resolved to prepare an amendment to *Lake Macquarie Local Environmental Plan 2004 (LMLEP 2004)* to rezone land in the southern portion of

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Killingworth 'to establish land use zones that will accommodate urban development and conservation'.

The Planning Proposal applies to land that was zoned 10 Investigation under LMLEP2004, and is now zoned RU6 Transition in LMLEP2014. The western section is approximately 8.6 hectares in size and the eastern section is approximately 6.7 hectares in size. Council owns approximately 65% of the land within the study area, with the remainder of the lots in private ownership.

A Local Environmental Study was prepared to inform the proposed zones and was considered by Council on 12 August 2013. It proposed the RU6 zoned land be rezoned to a combination of residential and environmental zones. The gateway determination was received on 30 October 2013 and advised Council to proceed following conditions relating to minor additions to the Planning Proposal and consultation requirements. A copy of the gateway determination is provided at Attachment 3.

The Planning Proposal was placed on public exhibition for the period 14 July to 12 August 2014. Council received four (4) responses from government agencies and twelve (12) submissions from the public. Following this consultation, two changes have been made to the exhibited planning proposal.

The initial planning proposal identified thirty-three (33) land parcels to be reclassified from Community to Operational to assist with the servicing of land proposed for residential use, and the management of conservation land through biodiversity offsetting principles (including land consolidation). However, the Office of Environment and Heritage (OEH) advised that land proposed for future biodiversity offsetting should remain classified as Community. This has reduced land to be reclassified to Operational from 33 to three and involves lots proposed for residential development, see Attachment 4.

The OEH also advised Council to review the vegetation type mapped across the largest lot bounded by Throckmorton, Park and Geordie Streets (Lot 1 DP 795370), which is owned by Council. The OEH noted there was inconsistency in the ecological reports regarding whether the *Red Ironbark - Paperbark Forest* constituted *Lower Hunter Spotted Gum - Ironbark Forest*, an Endangered Ecological Community (EEC). The OEH requested Council to consider rezoning this area to E2 Environmental Conservation, see Attachment 2. In addition, seven of the 12 public submissions objected to the proposed residential zone on this land, based on its ecological and heritage value.

Council staff investigated the vegetation type, and it was confirmed it consisted of an EEC. As a result, the proposed zone has changed from R2 Residential to E2 Environmental Conservation.

If the rezoning proceeds, any future development will still be dependent on the provision of appropriate infrastructure. All property owners will need to be involved in preparing a development plan to fund, manage, and construct essential services such as roads, electricity, water, sewer, and telecommunications.

### **Proposal:**

It is proposed that Council adopts the Planning Proposal, as contained in Attachment 1.

The Planning Proposal seeks to:

- rezone existing RU6 Transition zoned land to a combination of R2 Low Density Residential and E2 Environmental Conservation zones – see Map 3 in Attachment 1; and

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- reclassify three Council owned lots proposed for residential use to Operational – see Map 4 in Attachment 1.

### **Consultation:**

Internal consultation was undertaken with Council's Community Planning, Asset Management, Waste Environment and Rangers, Development Assessment and Compliance, Sustainability, and Property and Business Development departments during the preparation of the LES.

### External Consultation:

#### *Government Agencies*

The gateway determination required consultation with the following State government agencies prior to public exhibition:

- Hunter Water Corporation
- NSW Rural Fire Service (RFS)
- NSW Trade and Investment – Mineral Resources and Energy – Regional Infrastructure and Services Division
- Office of Environment and Heritage
- Mine Subsidence Board (MSB)
- Awabakal Local Aboriginal Land Council (ALALC)

No responses were received by MSB or ALALC.

Hunter Water Corporation (HWC) do not object to the rezoning, however they advised that the proposed residential areas could not be supplied from the existing water supply and that further infrastructure would be required, which could cost approximately \$2 million. HWC also advised a developer funded servicing strategy and wastewater servicing strategy would need to be provided for the proposed residential areas, prior to future development. The finalisation of the required infrastructure, associated costs and funding, will be developed following the rezoning.

The RFS outlined changes to the Asset Protection Zones (APZs) that are required for the proposed residential areas. The APZs have been considered in the Planning Proposal, and final APZs will be identified prior to any approval for a dwelling. Council also sought further advice from the RFS on the water supply requirements for fire fighting purposes and these requirements will also be included in the development plan.

NSW Trade and Investment – Mineral Resources Branch stated that any future development within the subject area should be designed to meet appropriate building design guidelines established by the Mine Subsidence Board. This comment has been noted and will be considered as part of the assessment of future development applications for dwellings within the proposed residential zone.

The OEH comments are outlined in the Background section of this report, and have resulted in changes to the Planning Proposal since exhibition.

#### *Public Submissions*

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Twelve submissions were received during the public exhibition period from private landowners and residents. Issues raised in the submissions, and a response to each, are provided below.

### Issue 1 – Bushfire Safety

Three submissions were received from residents concerned over emergency evacuations with additional cars on the road, and the water supply and pressure required for fire fighting purposes.

#### *Planning Comment:*

The main access to Killingworth is via The Broadway with a second access for emergencies via Killingworth Street. A bushfire assessment (BA) was prepared as part of the Local Environmental Study. The BA concluded that the proposal met relevant legislative requirements as long as Asset Protection Zones were implemented and that site access complied with the Planning for Bushfire Protection Guideline (2006). A Traffic Impact Study was also prepared and concluded the additional development would have a minor impact on the surrounding road network.

The landowners will fund the supply of water required for future development, this infrastructure will also accommodate appropriate water supply and pressure for fire fighting purposes.

### Issue 2 – Water supply and pressure

Four submissions raised concern over the impact of future development on the water supply and pressure currently utilised by existing residents. Existing water pressure is considered very low.

#### *Planning Comment:*

Future developments would need to fund the required water infrastructure, but are not responsible for increasing water pressure to existing residents. Council is in discussions with Hunter Water Corporation to develop options to assist the delivery of water supply and pressure for future residents.

### Issue 3 – Proposed minimum lot size of 450m<sup>2</sup>

Two submissions were received stating the proposed minimum lot size of 450m<sup>2</sup> was too small and would be out of place with the Killingworth village.

#### *Planning Comment:*

The proposed minimum lot size is based on the R2 Low Density Residential zone minimum lot size applied across the LGA in *LMLEP 2014*.

### Issue 4 – Proposed extension of roads

Four submissions raised concern with the proposed road extensions of The Boulevard, Geordie, Stephenson, Park and Sackville Streets, because of increased traffic and the removal of vegetation.

#### *Planning Comment:*

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There are no plans to extend Park or Geordie Streets. The Boulevard has already been extended. There will be some clearing for proposed residential zoned land along the southern end of this street. There will be clearing involved with the extension of Stephenson and Sackville Streets to service the lots along these roads. The Flora and Fauna studies undertaken did not recommend that the vegetation in these locations be included in the E2 Environmental Conservation zone.

The Traffic Impact Study concluded that the additional lots would have minor impact on the surrounding road network.

### Issue 5 – Increased Traffic

Two submissions raised that an additional 78 residential lots would equate to another 150 vehicles on the streets.

#### *Planning Comment:*

The Traffic Impact Study did assess the impact of up to 78 potential additional residential lots as part of the assessment. The assessment concluded that the predicted traffic impacts would have a minor impact on the surrounding road network and no further upgrades were advised. In addition, the proposed Amendment will only result in 27 additional lots being zoned residential.

### Issue 6 – Rezone Lot 1 DP 795370 to Conservation

Five submissions requested that Council rezone Lot 1 DP 795370 (bounded by Throckmorton, Park and Geordie Streets) to Conservation due to ecological and heritage value.

#### *Planning Comment:*

Following further investigation and advice from OEH, Council staff have recommended a change to the Planning Proposal to zone Lot 1 DP 795370 (30 Throckmorton Street) to E2 Environmental Conservation. There will be a level of protection for the heritage value of the school site with the land owned by Council and zoned conservation, see Attachment 2.

### Issue 7 – Impact on Aboriginal heritage

Two submissions raised concern over the impact of the rezoning on Aboriginal objects identified in the Cultural Heritage Assessment.

#### *Planning Comment:*

The Cultural Heritage Assessment identified five Aboriginal sites, and a cultural significance assessment was undertaken for each site. All sites were given a 'low' local and regional overall significance rating, except a grinding groove, which was given a 'moderate' local significance rating. This object is within land proposed for conservation, along with the scarred tree and one of the Aboriginal artefacts found. The two other artefacts identified are within the proposed residential zone and will require an Aboriginal Heritage Impact Permit from the OEH.

The OEH reviewed the Cultural Heritage Assessment and raised no objection to the findings.

### Issue 8 – All land should be rezoned to conservation

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Five of the submissions received requested that Council consider rezoning all of the land to conservation.

*Planning Comment:*

A Local Environmental Study was completed to inform the proposed zones. There is some land within the subject area that is clear of vegetation and suitable for residential development, if/when servicing is available. This land should be zoned appropriately. Some clearing of land will be required for some other areas that are strategically located for residential development.

Issue 9 – One submission stated that the increased population will increase crime and insurance premiums and property values will decrease.

*Planning Comment:*

There is no evidence to verify these concerns.

Issue 10 – One submission noted that the proposed rezoning compromises the village atmosphere in Killingworth

*Planning Comment:*

The existing "paper subdivision" was created in the early 1900s at the same time as the existing Killingworth village. There is proposed to be 27 additional standard residential lots following the rezoning, and a further 52 lots will be zoned conservation, providing a level of protection previously not recognised for the existing bushland. The new residences are unlikely to result in any change to the residential character of Killingworth.

Issue 11 – Consultation

One landowner stated that they should have been notified earlier in the rezoning process, and been given longer than eight weeks to prepare a submission.

*Planning Comment:*

Council resolved to commence rezoning in May 2007 and the rezoning progressed as funding became available. On 22 January 2009, a letter was sent to landowners to inform them of the rezoning proposal and the preparation of an ecological study. Following the completion of this study, on 9 February 2011, landowners were sent a letter to inform them of the rezoning and the preparation of the additional Local Environmental Study that was required. On 20 May 2014, a letter was sent to landowners inviting them to an information evening being held on 12 June 2014 to discuss the outcomes of the LES, government agency feedback, and the way forward following the completion of the rezoning.

Whilst the rezoning has taken some time, landowners have been informed on the critical milestones of the project.

Issue 12 – SEPP – Exempt & Complying Code 2008

One landowner objected to their land being excluded from the SEPP Exempt and Complying Code 2008 and another stated their lot in the proposed conservation zone was not mapped as being environmentally sensitive.

*Planning Comment:*

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Areas proposed for residential development requiring the removal of vegetation and significant infrastructure have been identified as environmentally sensitive to ensure adequate servicing arrangements are in place prior to any DA approval for a dwelling. This seeks to ensure the costs of associated infrastructure are distributed equitably and infrastructure provision is delivered in a coordinated manner.

### Issue 13 – Payment of rates on land zoned conservation

Two submissions were received questioning the fairness of paying rates on land that cannot be built on for residential purposes.

#### *Planning Comment:*

Part 6 of the Local Government Act 1993 (The Act) identifies what land is exempt from rates, this primarily includes land owned by public land authorities under the relevant legislative acts such as crown land, national parks, schools, water authorities, fisheries etc. Otherwise, rates payable are linked to the value of the land. The land value is based on the unimproved value and the Valuer General determines land value, and zoning would be taken into account.

### Issue 14 – previous dwelling entitlement

One landowner stated that it was unfair that a previous dwelling entitlement (which permitted dwelling-houses with consent), was taken away.

#### *Planning Comment:*

In 1986, an amendment was made to *Lake Macquarie Local Environmental Plan 1984 (LMLEP 1984)* to allow the development of dwellings on the subject land. However, a clause in *LMLEP1984* prevented Council from approving development on land, unless satisfactory arrangements had been made with the Hunter Water Board for the supply of water and disposal of sewage.

As satisfactory arrangements with Hunter Water were not secured, the paper subdivision was zoned 10 Investigation under *LMLEP2004*. The 10 Investigation Zone indicated that further studies were necessary to determine the most suitable land use zone for the area. This included ecological surveys to comply with legislation that had come into force since 1986, such as the *Threatened Species Act 1995* and the *Native Vegetation Act 2003*.

Issue 15 – land zoned conservation was predominantly clear in 1982, how can regrowth have such high ecological value?

#### *Planning Comment:*

Regrowth has the potential to mature to form important habitat, and the land may have value as a part of a larger environmental corridor.

Issue 16 – Two landowners who own property south of Sackville Street on the western side, stated the LES did not identify any major issues with their property and it should be rezoned to residential, not conservation.

#### *Planning Comment:*

The RFS advised that a 35m APZ is required along the southern boundary from existing bushland due to the vegetation type and topography of land in this area. The RFS also reiterated that roads should be placed between residential zones and

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bushland in accordance with *Planning for Bush Fire Protection 2006*. All APZs should be located within low and moderate biodiversity value areas. The 35m APZ required to the south would utilise almost the entire blocks on the southern side of Sackville Street, would not provide suitable area for the construction of a dwelling.

The land on the southern side of Sackville Street has also been identified as part of an ecological corridor and was mapped as having high ecological value. There are also more significant servicing infrastructure requirements to develop these areas.

Issue 17 – Council has a moral obligation to allow development

### *Planning Comment:*

Council must adhere to legislative requirements including various Federal and State Acts, Regulations, State Environmental Planning Policies, and Section 117 Directions under the *Environmental Planning and Assessment Act 1979*. This requires that Council, by law, must consider a number of issues including ecological constraints, servicing, bushfire, heritage, geotechnical assessment, flooding, traffic, social and economic constraints. All these legislative requirements were addressed by the LES which was prepared by an external consultant. The consultant identified the proposed zones following the outcome of these studies.

### Public Hearing

A public hearing on the reclassification of three Council owned lots proposed was held on 24 September 2014. Eight members of the community attended the hearing. The independent facilitator's report prepared for the public hearing is Attachment 5 to this report.

### **Implications:**

#### ***Policy Implications:***

Implications relating to Council's Lifestyle 2030 Strategy, State Environmental Planning Policies, and guidelines are detailed in the Planning Proposal. The Planning Proposal is generally consistent with all relevant policies and planning strategies.

### Lower Hunter Regional Strategy

The Planning Proposal is consistent with the objectives and outcomes in the Lower Hunter Regional Strategy (LHRS).

Appendix 1 of the LHRS contains sustainability criteria for proposed development sites outside the designated areas of the Strategy. Table 4 in the attached Planning Proposal, contains an assessment of the proposal against the sustainability criteria of the LHRS, demonstrating that the site is an innovative LEP amendment proposal that has merit to be considered, even though it is outside of the regional strategy process.

### Lifestyle 2030 Strategy

The proposal has the potential to provide for additional housing, which would assist in accommodating population growth predictions established in the Lifestyle 2030 Strategy (LS2030).

The site is identified in LS2030 as a Council Investigation Area which reflects its existing RU6 Transition zone. The proposed zones will reinforce the existing village of Killingworth, while managing the City's environment, and protecting heritage and

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economic resources. The proposed development of the site will not affect the hierarchy of centres in Lake Macquarie.

### Newcastle-Lake Macquarie Western Corridor Planning Strategy

The Newcastle-Lake Macquarie Western Corridor Planning Strategy (the Strategy), prepared by the Department of Planning and Infrastructure, identifies further planning principles, development criteria, and infrastructure requirements to implement the actions identified in the LHRS for the western corridor of Newcastle and Lake Macquarie local government areas.

It is noted that the Strategy identifies the immediate area surrounding the township of Killingworth as 'Residential Investigation', with further land adjoining this area as 'Employment Lands Investigation'.

### State Environmental Planning Policies

Relevant State Environmental Planning Policies (SEPPs) have been considered in the preparation of the Planning Proposal. The Planning Proposal is consistent with these SEPPs.

### Section 117(2) Ministerial Directions

The Planning Proposal is generally consistent with the relevant Ministerial Directions made pursuant to Section 117(2) of the *EP&A Act 1979*.

The Planning Proposal is inconsistent with Direction 3.4 Integrating Land Use and Transport, however the delegate of the Minister for Planning agreed it was of minor significance, and no further approval was required for this Direction.

### Lake Macquarie Local Environmental Plan 2014

The proposal seeks to rezone thirty-four (34) lots, three (3) in the east of the study area and thirty-one (31) in the west, to R2 Low Density Residential. The remainder of the site is proposed to be zoned E2 Environmental Conservation. Three land parcels owned by Council will also be reclassified to Operational land, see Attachment 4.

The minimum lot size and height of building controls generally applying to the R2 Low Density Residential and E2 Environmental Conservation zones across the LGA are proposed for the subject land.

### ***Environmental Implications:***

A Biodiversity Review was prepared by EcoLogical Australia for the site in 2010, and a comprehensive LES was prepared by RPS, which included a peer review of the biodiversity assessment, as well a number of additional studies. The LES and the proposed zones were considered by Council on 12 August 2013 with a resolution to proceed.

As discussed previously, one of the lots owned by Council (Lot 1 DP 795370) was identified by the OEH as potentially containing an EEC. Further investigations by Council determined this was an EEC and the zoning of this land has been amended from a residential zone to a conservation zone.

Some of the land identified as high ecological value has been identified for residential development due to the existing subdivision layout. When development applications are

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lodged for these areas, a flora and fauna assessment will be required in accordance with Council's DCP.

Further detail on the environmental implications of the Planning Proposal is provided at Attachment 1.

### ***Social Implications:***

#### 10 Year Community Plan

The 10 Year Community Plan focuses on five key areas, one being urban and economic development, which relate to this Planning Proposal. The objective of this focus area is to ensure the City's economy prospers under managed growth that enhances the quality of life while balancing employment and environmental objectives. The 10 Year Community Plan aims to ensure that new development provides adequate facilities for incoming population, in order to achieve this objective.

#### Social and Economic Impact Assessment

A Social and Economic Impact Assessment (SEIA) was undertaken by RPS to consider the potential effects of the rezoning. Based on the findings of the SEIA, the rezoning and subsequent development of the site would not have a detrimental social or economic impact on the local community. Sufficient capacity exists in most of the local social infrastructure (schools, parks, open space); however, concerns were raised with the shortage of general practitioners available in the area.

### ***Infrastructure Asset Implications:***

While Council owns a number of land parcels in this area, these are mainly undeveloped lots. Future development may require the upgrade of roads, and as Council owns land within this area, may need to fund part of the road upgrades.

It is noted that a development plan should be prepared, following the rezoning of the land, to outline the funding, construction, and management of essential services such as roads, electricity, water, and sewer to the land parcels in this area.

### ***Financial Implications:***

There will be no specific financial implications for Council in finalising the LEP amendment process.

Future costs relating to the preparation and delivery of a development plan will need to be identified following the rezoning.

### ***Risk and Insurance Implications:***

The risks associated with preparing a Planning Proposal is minimised by following the process outlined in the *EP&A Act 1979*, the *Environmental Planning & Assessment Regulation 2000*, and Council's LEP Amendment Procedure.

### **Options:**

1. Council resolves to make the amendment to *LMLEP 2014* based on the attached Planning Proposal. This is the recommended option, as it aligns with the strategic direction of the LHRS, the Newcastle-Lake Macquarie Western Corridor Planning Strategy, and the LES prepared for the site.
2. Council resolves to amend the Planning Proposal.



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3. Council resolves not to support the amendment to *LMLEP 2014*. This is not the preferred option as it will not allow the resolution of a long-term issues associated with the “paper” subdivision.

### **Conclusion:**

The draft Amendment to *LMLEP 2014* – land at Killingworth, was placed on public exhibition for the period 14 July to 12 August 2014, in accordance with the Council resolution and gateway determination.

Twelve submissions were received from the public, and four from government agencies. Following the consultation process, the number of parcels proposed to be zoned to residential has been reduced by one and the number of land parcels proposed for reclassification from Community to Operational has reduced from 33 to three.

As part of the gateway determination, Council received written authorisation to exercise delegation for this amendment. It is recommended that Council resolve to make the draft Amendment to *LMLEP 2014* – land at Killingworth to provide greater certainty for landowners in the area and progress with the orderly development of an historic “paper” subdivision.

Manager - Integrated Planning - Sharon Pope

### **Attachments:**

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|----------------------------------------------------------------|-----------|
| 1. Planning Proposal                                           | D07193647 |
| 2. Map identifying proposed E2 Environmental Conservation area | D07193650 |
| 3. Gateway Determination                                       | D05342112 |
| 4. Map identifying changes to reclassification post exhibition | D07193653 |
| 5. Public Hearing Facilitator's report                         | D07193655 |