

Lake Macquarie LEP 2014- Reclassification of Council owned land from Community to Operational Land

Proposal Title :	Lake Macquarie LEP 2014- Reclassification of Council owned land from Community to Operational Land		
Proposal Summary :	The Planning Proposal (the proposal) relates to one Council owned parcel of land, and one privately owned parcel of land within the Lake Macquarie LGA. The proposal seeks to: 1) Reclassify Part of Lot 2, DP 1182441 (2C T C Frith Avenue Boolaroo) from community land to operational land; and 2) Classify Part of Lot 1, DP 1182331 (1A Main Road Boolaroo) to community land.		
PP Number :	PP_2015_LAKEM_004_00	Dop File No :	15/03803

Proposal Details

Date Planning Proposal Received :	27-Feb-2015	LGA covered :	Lake Macquarie
Region :	Hunter	RPA :	Lake Macquarie City Council
State Electorate :	LAKE MACQUARIE	Section of the Act :	55 - Planning Proposal
LEP Type :	Reclassification		

Location Details

Street :	2C TC Frith Avenue		
Suburb :	Boolaroo	City :	Boolaroo
		Postcode :	2284
Land Parcel :	Lot 2, DP 1183441 being Zone R3 Medium Density Residential		
Street :	1A Main Road		
Suburb :	Boolaroo	City :	Boolaroo
		Postcode :	2284
Land Parcel :	Lot 1, DP 1183441 being Zone R3 Medium Density Residential		

DoP Planning Officer Contact Details

Contact Name :	Susan Blake
Contact Number :	0249042700
Contact Email :	susan.blake@planning.nsw.gov.au

RPA Contact Details

Contact Name :	Joanne Marshall
Contact Number :	0249210585
Contact Email :	jmarshall@lakemac.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :	
Contact Number :	
Contact Email :	

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
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 : **Council resolved at its meeting on 9 February 2015 to support the preparation and lodgement of the proposal with the Department.**

Council submitted the proposal to the Department on 24 February 2015, requesting a Gateway Determination to enable amendments to Lake Macquarie LEP 2014.

Additional information was requested by the Department regarding the title deeds and any registered instruments against the land. The Department also noted that Council may be able to classify land without the need for a planning proposal. The objectives of the proposal refer to classification of Part of Lot 1, DP1183441. This process doesn't occur through an LEP amendment. The objectives of the planning proposal should be amended.

Council agreed on 25 February 2015 that Part of Lot 1, DP 1183441 (1A Main Road Boolaroo) can be classified as community land under section 31, 33 and 34 of the Local Government Act 1993, without the need for a planning proposal.

The Department also requested further information pertaining to the extinguishment of any interests in the land. Council response on 27 February 2015 indicated that the 'drainage reserve notation' is likely to need extinguishment from Part of Lot 2, DP 1183441. The planning proposal will need to be updated as necessary, to assist the community in understanding what is exactly proposed.

The proposal involves reclassifying Part of Lot 2, DP 1182441 being Council owned land. Under section 30 of the Local Government Act 1993, Council intends to discharge interests from this land. Consequently Council's decision not to seek authorisation to use its delegations is supported.

External Supporting Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately outlines the intended outcomes of the proposal to classify and reclassify land.**

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

Is an explanation of provisions provided? **Yes**

Comment : **The proposal seeks to amend Lake Macquarie LEP 2014 through changes to Schedule 4 and the Land Reservation Acquisition map.**

The explanation of provisions includes reference to Part of Lot 1, DP 1183441. The process of classifying land does not form part of an LEP amendment, and should be removed from the planning proposal.

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

2.2 Coastal Protection

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

6.3 Site Specific Provisions

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 55—Remediation of Land

SEPP No 71—Coastal Protection

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

Ministerial Section 117 Directions

*** 2.2 Coastal Protection**

Under cl.3, the s.117 Direction applies if the planning proposal includes land within the coastal zone as defined under the Coastal Protection Act 1979. Council's contention that the boundary adjustment will not impact on the provisions of the NSW Coastal Policy, Coastal Design Guidelines 2003, or the NSW Coastline Management Manual is concurred with due to the small size of the land parcel.

Any apparent inconsistency with the direction is considered to be justified as it is of minor significance.

*** 4.1 Acid Sulfate Soils**

Under cl.5 of this s.117 Direction, a planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils (ASS) unless the planning authority has considered an ASS study. The land is already zoned R3 Medium Density Residential under the Lake Macquarie LEP 2014, and the subject site is identified as Class 2 of the Lake Macquarie ASS Planning Map.

Although the land is not proposed to be rezoned, the reclassification of land will

potentially enable intensification of the land. The land can be managed as part of any future development process using provisions within Clause 7.1 Acid Sulphate Soils of Lake Macquarie LEP 2014. Any inconsistency with the direction is therefore considered to be of minor significance.

*** 4.2 Mine Subsidence and Unstable Land**

In accordance with cl.4(a) of the s.117 Direction when preparing a planning proposal that would permit development on land within a Mine Subsidence District, Council must consult with the Mine Subsidence Board. The site is identified within a Mine Subsidence District.

Consistent with cl.4 requirements of this Direction, Council intends to consult the Mine Subsidence Board, following receipt of the Gateway Determination. Once a reply is received from the Board, consistency with this s.117 Direction can be determined.

*** 4.3 Flood Prone Land**

Under cl.3 of the s.117 Direction, this Direction applies when a planning proposal creates, removes or alters a zone or provision that affects flood prone land. The site is identified as Flood Prone Land.

Although the land is not being rezoned, the reclassification of land will potentially enable intensification of the land. The proposal is of minor significance and flood impacts can be considered as part of future development assessment and provisions of clause 7.3 Flood Planning of Lake Macquarie LEP 2014. Any inconsistency with the direction is therefore considered to be of minor significance.

*** 6.2 Reserving Land for Public Purposes**

The proposal seeks to reclassify council owned land currently identified as a drainage reserve. In accordance with cl.4 and the s.117 Direction, a proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Secretary of Planning and Environment.

In preparing the proposal Council has noted that the reclassification would permit a boundary adjustment enabling the developer of the adjoining land to rationalise their subdivision proposal. The reclassification of the drainage reserve to operational land will enable reconfiguration of the road and a housing lot. In exchange for this Council owned land, the Council will receive additional land along TC Frith Avenue frontage for incorporation into the drainage reserve. Lot 2 DP 1183441 was originally dedicated to Council by the developer at no cost to Council, and was classified as community land at the time of dedication in March 2013 as it was intended to be used as a drainage reserve. There is no objection to the reduction in the community land. By approving the Gateway Determination, the Secretary of Planning and Environment has agreed to the reduction of land for public purposes and this s.117 Direction.

State Environmental Planning Policies (SEPPs)

*** SEPP No. 55 Remediation of Land**

The land and surrounding areas relating to the proposal have previously been identified as contaminated land. Remediation works have taken place, and a Site Audit Statement has now been issued by the NSW Environment Protection Authority stating that the land is now suitable for residential use. The land is zoned R3 Medium Density Residential and shall remain, the PP only relates to the classification of the land. Further investigation may be required as part of the development assessment process, however sufficient information has been provided to support the proposal.

*** SEPP No.71 Coastal Protection**

The proposal indicates the land is located within the coastal zone identified in this SEPP. The proposal does not include rezoning land, and the reclassification will permit a boundary adjustment. Council contention that the proposal satisfies clause 8

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requirements of the SEPP is concurred with. Further information may be required as part of the development assessment process, however sufficient information has been provided to support the proposal.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has proposed a minimum 28 days for public consultation in accordance with section 5.5.2 of the Department's LEP guideline. A public hearing will also be held in accordance with section 29 of the Local Government Act 1993. The public hearing will be undertaken in accordance with the Department's LEP guideline.

This community consultation is supported.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Lake Macquarie Standard Instrument LEP (LM LEP 2014) was gazetted on 12 September 2014.

Assessment Criteria

Need for planning proposal :

1. Is the planning proposal a result of any strategic study or report?
Council advises that the proposal has not been prepared following any outcomes of a study or report into the subject property. Rather the properties have been identified through routine administrative process.

Lot 2, DP 1183441 (2C TC Firth Avenue Boolaroo) was originally dedicated to Council by the developer at no cost to Council, and was classified as community land at time of dedication in March 2013 for its intended use as a drainage reserve. Investigations reveal that the land was not dedicated to Council in lieu of section 94 contributions. The proposal involves a land swap, Lake Macquarie City Council is the landowner for part of the site to be reclassified (from community to operational land), and Bunderra Holdings Pty Ltd are the owners of the part of the land to be transferred to Council and to be classified community land. The resultant land swap will have negligible loss in public land.

2. Is the planning proposal the best means of achieving the objectives or intended

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outcomes or is there a better way?

It is considered that a planning proposal is the best means of facilitating reclassification of Lot 2, DP 1183441 (2C TC Frith Avenue Boolaroo) from community to operational land.

It is considered by the Department and agreed by Council officers on 25 February 2015 that Part of Lot 1, DP 1183441 (1A Main Road Boolaroo) can be classified as community land under section 31 and 34 of the Local Government Act 1993, without the need for a planning proposal.

Council advised that the planning proposal for classification of Lot 1, DP 1183441 to community land, and reclassification of Lot 2, DP 1183441 were submitted together as the boundary adjustment involves a land swap between Lake Macquarie City Council and Bunderra Holdings Pty Ltd, and would make it transparent that there would be no loss in community land.

It is recommended that classification of Part of Lot 1, DP 1183441 (1A Main Road Boolaroo) to community land be undertaken in accordance with section 31, 33 and 34 of the Local Government Act 1993, without the need for inclusion in this planning proposal.

3. Is there a community benefit?

It is considered the proposal will maintain, if not enhance the net community benefit, and facilitate a land exchange ensuring the community has approximately the same amount of open space within the locality. As Council notes the reclassification of community land to operational land will enable a better layout for the subdivision plan. Whilst the classification of the land to community land and land exchange will facilitate the use of land as a drainage reserve.

Consistency with strategic planning framework :

Lower Hunter Regional Strategy (LHRS)

There is no specific outcomes relating to reclassification of Council land in the LHRS. The LHRS specifically identifies Glendale as an emerging Major Regional Centre. The subject land is at Boolaroo which is on the southern edge of the Glendale growth area, and accordingly, the adjoining subdivision for residential housing and drainage reserve supports the strategy. The proposal is not contrary to the provisions of the Lower Hunter Conservation Plan.

Lake Macquarie Lifestyle 2030

There is no specific discussion relating to reclassification of land in Lake Macquarie Lifestyle 2030. Council notes the proposal is consistent with the strategic plan maps and the intended future use of the site to promote residential development consistent with the objectives of the strategy. The site is not identified in the strategy's Green System Map as having any significant environmental features.

Environmental social economic impacts :

The land has not been identified as containing critical habitat or threatened species, populations or ecological communities or their habitats.

The site and surrounding land has previously been identified as significantly contaminated land and remediation works have taken place. A site Audit Statement has now been issued by the NSW Environment Protection Authority stating that the land is now suitable for residential use. The contamination issue in this area is currently the subject of community concern. The reclassification does not facilitate any additional uses on the land which remain R3 Medium Density Residential. Due to the small scale nature of the proposed reclassification, the Department concurs with Council's assessment that it is unnecessary to prepare an environmental study under section 57 of the Environmental Planning and Assessment Act 1979.

Due to the remediation works, the land is clear of all vegetation and ground cover. Lot 2, DP 1183441 (2C TC Frith Avenue, Boolaroo) contains a drainage basin which currently contains water.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **Nil**

Public Authority Consultation - 56(2)(d) : **Mine Subsidence Board**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Additional_ Information_Land_Titles_and_Maps.pdf	Map	Yes
PLANNING_PROPOSAL_2C_TC_Frith_Ave_BOOLAROO.docx	Proposal	Yes
Lake_Macquarie_City_Council_Request_for_Gateway_Determination_Reclassification_of_Land_at_Boolaroo.pdf	Proposal Covering Letter	Yes
LZN_Existing.jpg	Map	Yes
Proposed-Map.jpg	Map	Yes

Planning Team Recommendation

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

S.117 directions:

- 2.2 Coastal Protection**
- 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**

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6.1 Approval and Referral Requirements 6.2 Reserving Land for Public Purposes 6.3 Site Specific Provisions

Additional Information : It is recommended that the Planning Proposal proceed subject to the following conditions:

1. Prior to the planning proposal being placed on public exhibition, Council is to:
a. remove reference to classification of Part of Lot 1, DP 1183441 (1A Main Road, Boolaroo) to community land from the planning proposal. Council can classify the land as community land under section 31, 33 and 34 of the Local Government Act 1993, without the need for a planning proposal.
b. confirm that the planning proposal will extinguish the interest in the land relating to the land dedication as a drainage reserve, and update the planning proposal as necessary, to assist the community in understanding exactly what is proposed.

2. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:

(a) the Planning Proposal be made publicly available for a minimum 28 days.
(b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 5.5.2 of A guide to preparing LEPs (Department of Planning & Infrastructure 2013)

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

* Mine Subsidence Board

The public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material. The public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the Planning Proposal.

4. The Secretary's delegate agree to the changes to the public reservation of land and 6.2 Reserving Land for Public Purposes, and agree to the following section 117 Direction inconsistencies – 2.2 Coastal Protection; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land as the inconsistencies with the Directions are of minor significance.

Consultation is required with the Mine Subsidence Board to determine consistency with section 117 Direction – 4.2 Mine Subsidence and Unstable Land. Council is to amend the Planning Proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

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

6. As the planning proposal includes reclassification of public land that may require the Governor to discharge 'public reserve' status, trusts, interests etc from the land, Council should not exercise their delegations under section 59(1) of the EP&A Act.

7. The time-frame for completing the LEP is to be 9 months following the Gateway Determination.

Supporting Reasons : The proposal is essentially a housekeeping amendment that will enable address a relatively minor administrative anomaly through a boundary adjustment. The proposal involves a land swap. Lake Macquarie City Council is the landowner for part of the site to be reclassified (from community to operational land), and Bunderra Holdings Pty Ltd are the owners of the part of the land to be transferred to Council and to be classified community land. This land swap would mean no loss of land to the community.

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The proposal is consistent with the objectives of the Lower Hunter Regional Strategy and Council's Lifestyle 2030 strategy and on balance it is considered that there will be a nett community benefit to the proposal proceeding.

Signature:



Printed Name:

K O'Flaherty

Date:

4/3/15

