

## Planning Services

### Plan Finalisation Report

---

**Local Government Area:** Lake Macquarie

**File Number:** OBJ15/06980

#### 1. NAME OF DRAFT LEP

Lake Macquarie Local Environmental Plan 2014 Amendment No.26 (draft LEP).

#### 2. SITE DESCRIPTION

The planning proposal applies to land at 2 Charles Street Swansea (Lot 100 DP613065 and Lot C DP 402886), 27 Lake Road, Swansea (Lot 63 DP18797), 29 Lake Road, Swansea (Lot 103 DP 613065), 31 Lake Road, Swansea (Lot 102 DP 613065) and 37 Lake Road, Swansea (Lot 1 DP 507899) (the site).

#### 3. PURPOSE OF PLAN

The draft LEP seeks to facilitate the redevelopment of part of the former Swansea Bowling Club and adjoining lands held in the same ownership for low density residential. It involves making the following changes to the Lake Macquarie LEP 2014:

- rezones the site from RE2 Private Recreation and R3 Medium Density zone to R2 Low Density Residential zone;
- changes the minimum lot size for the subject land from no minimum lot size (current RE2 portion) and 900 m<sup>2</sup> (current R3 portion) to 550 m<sup>2</sup>;
- changes the maximum building height for the subject land from 8.5 m to 10 m;
- adds the subject land to the Environmentally Sensitive Land map;
- modifies clause 7.20 Environmentally Sensitive Land to require the consent authority to consider whether a development proposal may be adversely affected by hazards such as bushfire and flooding.

The proposal will facilitate approximately 16 dwellings on a 10,600 m<sup>2</sup> site located in the existing urban area of Swansea. The site (and broader area) is flood affected and subject to evacuation constraints. Whether the proposal is an appropriate response to these matters is the key issue with the proposal. To address this, the proposal reduces the dwelling potential of the site by rezoning R3 to R2 and introduces new flood-related DCP provisions specific to the site. Evacuation and local adaption planning is also proposed to address risks for the broader suburb. Refer to Figures 1 and 2 for proposed zone changes and the flooding context within the locality.



**Figure 1 Existing zoning compared to the proposed zoning (source: LMCC final planning proposal)**



**Figure 2: Land use zoning (existing) and flood affection for Swansea locality (source: Planning Portal 28/2/18)**

## STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Swansea Electorate. Yasmin Catley MP is the State Member for Swansea.

Pat Conroy MP is the Federal Member for Shortland which includes the site.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 4. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 3 July 2015 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 9 June 2016 to extend the time to complete the proposal and on 30 May 2017 due to changes in the proposed provisions and to further extend the time to complete the proposal.

The most recent alteration to the Gateway occurred on 7 March 2018 to alter the proposed minimum lot size, make a minor additional change to clause 7.20 Environmentally Sensitive Land to specify bushfire as a hazard consideration, and to extend the completion timeframe to 10 May 2018 (**Attachment D**).

The proposal is due for finalisation on 7 June 2018.

## **5. PUBLIC CONSULTATION**

In accordance with the Gateway determination, community consultation was undertaken by Council from 5 June 2017 to 3 July 2017. Three submissions were received, with concerns raised regarding the provisions proposed, drainage, consistency with section 9.1 directions (3.1 and 4.3), impacts on native frogs, and the loss of an access way and recreation land. Council has responded to the issues as follows:

### Proposed planning provisions

The landowner raised concerns regarding the 700 m<sup>2</sup> minimum lot size proposed, following more detailed planning being undertaken which found the desired yield of 15 dwellings would not be achieved due to the irregular shape of the site. Council agreed to change the minimum lot size to 550 m<sup>2</sup> in response. Concerns were also raised regarding the proposed DCP provisions with minor changes being made as a result.

Concern was also raised by a community member regarding the 10 m height proposed, with Council responding that this height is the same as that which applies to adjoining lands.

### Wastewater and stormwater drainage

A community member raised concerns about these matters should the site be developed. Council responded by noting that detailed subdivision and stormwater plans would need to be prepared at the development application (DA) stage which would require approval by Council and Hunter Water.

### Section 9.1 Directions

Concern was raised that the proposal was inconsistent with directions 3.1 Residential Zones and 4.3 Flood Prone Land. Council notes that the Secretary had agreed to the inconsistencies.

### Impact on native frogs

A community member stated that native frogs used the site and that the proposal would have an adverse impact on this population. Council responded by undertaking a review of its records and a site inspection which did not confirm the presence of native frogs.

### Loss of access and private recreation land

Concern was raised that the community would lose an existing access route through the site if it was developed, and that it would lose access to recreation land. Council advises that it considered providing public access when it owned that portion of the site prior to sale to the bowling club in 2011, and that its retention was not supported by community

members. Further, Council states that it has considered the loss of private recreation land and considers the loss to be minor due to its provision elsewhere in the locality.

#### Department's consideration of Council's response

The Department is satisfied that Council has adequately responded to the issues raised. No further work is required at this time.

### **6. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult the Office of Environment and Heritage (OEH) and the State Emergency Service (SES) in accordance with the Gateway determination.

Council has consulted these authorities, with OEH supporting the proposal and SES initially objecting. Council has responded to the concerns raised by SES, and the Department has held discussion with SES regarding its objection. The objection has since been removed.

#### Office of Environment and Heritage

OEH states that the planning proposal has merit, and that its inconsistency with section 117 direction 4.3 Flood Prone Land is of minor significance (**Attachment OEH**). (The proposal is inconsistent with the direction because it states that land in a flood planning area must not be rezoned from a recreation zone to a residential zone).

OEH recognises the flood and evacuation issues associated with the site, noting that it is flood affected, evacuation is dangerous and that impacts are likely to worsen with sea level rise. It considers the increase to risk and evacuation timeframes due to this proposal to be minor given that large parts of Swansea are similarly affected currently. It highlights that measures need to be put in place to address flooding, sea level rise and evacuation for the suburb, and that Council's intended local adaption planning will address these matters over the longer term.

OEH states that improvements in evacuation planning need to continue to occur to manage risk in the interim for the locality. It acknowledges the findings of the proposal's flood study which identifies a high risk of evacuation failure. However, OEH notes that the study adopts a conservative approach, and that emerging technology in rainfall prediction coupled with Council investing in an improved flood warning system, should result in extended warning times for future events.

In terms of the merits of rezoning this site, OEH considers the R2 Low Density Residential (yielding 15 dwellings approx.) to be an acceptable outcome given the local adaption planning, the limited life of the dwellings (50 years) and the development standards which would need to be adhered to. OEH states that new detached dwellings would protect owners from flood-related losses and provide floor levels above the flood level for the life of the dwelling. Further, that they would provide a place for occupants to shelter in place in a worse-case scenario. OEH also states that these dwellings would not substantially increase total risk or constrain adaption options, nor increase the cost of maintaining services in Swansea due to rising sea levels.

In rezoning land currently zoned R3 Medium Density Residential and RE2 Private Recreation to R2 Low Density Residential, OEH states that the overall development potential of the site is reduced. Residential flat buildings, which would provide an increased

yield and have a longer life, would no longer be permitted and so a net reduction in future occupants would result for the site. OEH concludes that, on balance, the proposal has merit, notwithstanding the need for further evacuation planning and adaption planning to be undertaken in the future for the locality.

### State Emergency Services

SES states that as Swansea has well known evacuation constraints, it is unable to support a proposal that increases the risk to future occupants and burden for emergency services (**Attachment SES1**). It considers the proposal's inconsistency with s117 direction 4.3 Flood Prone Land is not of minor significance, and recommends that Council amend the zoning to ensure no more people are put at risk in Swansea. It also suggests that Council work towards improving evacuation routes to reduce flooding risks for the existing community.

In reaching this position, SES states that the land is in a highly flood prone area which has current evacuation constraints. It highlights the findings of the flood study which states that evacuation from Swansea has a high risk of failure, that effective warning times are potentially less than the time needed to evacuate (6-12 hours warning, 9-11 hours to evacuate), and that the depth of floodwater on evacuation routes (0.7 to 1.8 m) may make safe evacuation difficult. While SES recognises that the proposal attempts to reduce the number of people at risk through rezoning the R3 zoned land to R2, it states that this will still increase the emergency response requirement during a flood.

The Department met with SES to better understand its concerns, particularly in the context of Council and OEH views. SES re-iterated its position that it does not support development proposals which increases risk or demand for SES resources. Following discussion about future development and local adaption planning outcomes, SES advised that it no longer objects to the proposal (**Attachment SES2**), noting the proposal would result in a net reduction in persons potentially exposed to flood risks. Notwithstanding, SES emphasised the importance of Council continuing to improve flood warning systems and resilience planning for Swansea.

The additional SES advice requests that should the rezoning proceed, conditions be put in place to prohibit sensitive land uses like child care centres, educational facilities and seniors housing.

### Council response to SES concerns

Council provided a response to the initial objection made by SES (**Attachment E**). While less relevant now that SES has removed its objection, Council remains of the view that the proposal is an appropriate response to the flooding and evacuation issues. It highlights that the proposal would reduce the overall development potential of the site, that new dwellings would account for sea level rise and provide shelter in a flood event, and that the proposal was consistent with the principles of the NSW Floodplain Development Manual to reduce the impact of flooding and not unnecessarily sterilise the flood plain.

Council's advice also includes details regarding the timing and scope of works proposed for adaption planning for Swansea. Council advises that this work is to commence in 2018 and should take approximately two years to develop. The intention of the adaption plan is to identify measures to manage risk of current and future flooding and tidal inundation, and to provide more certainty about future development and assessment management in the community. Council also states that it is actively seeking funding to support further evacuation planning on the eastern side of Lake Macquarie.



## **7. POST EXHIBITION CHANGES**

Council amended the planning proposal in response to a landowner submission which requested the proposed minimum lot size on the site be reduced from 700 sqm to 550 sqm. This change has been considered and a Gateway alteration was issued on 7 March 2018 supporting the change. It should be noted that there is minimal change in the anticipated dwelling yield for the site (was 15 dwellings, now 16 dwellings).

## **8. ASSESSMENT**

Flooding and evacuation are key issues for the site and the existing urban area of Swansea. As noted by both OEH and SES, the site is subject to flooding and evacuation risks. The flood study undertaken identifies concerns regarding the adequacy of flood warning times (6-12 hours warning, 9-11 hours to evacuate), that evacuation routes are inundated to depths that make evacuation dangerous (0.7 to 1.8 m), and concludes that there is a high risk of evacuation failure.

The proposal's intention to rezone the former bowling and adjoining land held in the same ownership to R2 Low Density Residential is supported. It would reduce the number of dwellings that could occur on the site, reducing overall risk. While the current planning controls would not allow residential development on the RE2 Private Recreation zoned portion (4,800 sqm), the R3 Medium Density Residential zoned portion (5,800 sqm) allows residential flat buildings which provide for a greater density of residents. In rezoning the land to R2, this outcome is avoided.

As OEH and Council note, the existing planning provisions for the development of flood prone land, coupled with the additional provisions proposed for this site (DCP), will ensure new dwellings are flood adaptable, minimising flood-related losses and providing floor levels above the flood planning level for the life of the development. Further, that under a worse-case scenario where evacuation does not occur, the provisions would result in dwellings which would allow occupants to remain in place thereby limiting potential risks.

While SES has since removed its objection, the Department acknowledges the flooding and evacuation concerns SES has raised. It is agreed that placing additional people at risk should be avoided. Notwithstanding, the Department agrees with OEH and Council that the proposal achieves this outcome, because it results in a net reduction in the number of dwellings that could be developed on the site. The most recent SES advice shares this view.

As both agencies and Council recognise, progressing improvements to evacuation planning and commencing local adaption planning for Swansea is critical to reducing risks, particularly in the longer term as sea level rise worsens impacts. Council advised that it intends to undertake this work shortly, with funding currently being sought for evacuation planning, and adaption planning to commence in 2018.

Implementing a site-specific prohibition for sensitive uses as requested by SES is however not supported because it is not possible under the Standard Instrument LEP. The suitability of these uses would need to be evaluated through development assessment. Specific provisions regarding sensitive uses on flood liable land are contained in Council's DCP, and consultation requirements (Council, SES) are contained in the SEPP (Infrastructure) 2007

and SEPP (Educational Facilities and Child Care Facilities) 2017 depending on the use proposed.

Given the above, the Department considers that the proposal adequately responds to the flood risks and its finalisation is supported. The proposal results in a net reduction in risk and provides shelter in a worse-case evacuation scenario. It also recognises the site's location in an existing urban area that is subject to flood risks, and will be subject to further evacuation and adaption planning in the near future.

### Section 9.1 Directions

The proposal is inconsistent with direction 3.1 Residential Zones because it would reduce the permissible residential density on the land, and direction 4.3 Flood Prone Land because it would rezone land within a flood planning area from a recreation zone to a residential zone. The Secretary agreed that the inconsistency with these directions was of minor significance on 30 May 2017.

## **9. MAPPING**

The draft LEP will be implemented through mapping amendments to the land use zone, minimum lot size, height of buildings and environmentally sensitive land maps. The maps have been checked by the regional team and the ePlanning team. Minor changes were made to ensure the maps were suitable for plan-making.

## **10. CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument (**Attachment F**). Council confirmed on 8 January 2018 that it was happy with the draft and that the Plan should be made (**Attachment F**).

## **11. PARLIAMENTARY COUNSEL OPINION**

On 17 January 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

## 12. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP because:

- the proposal reduces flood risk for the site by reducing its development potential;
- dwellings resulting from the proposal would be flood adaptable, protecting owners from flood-related losses and providing floor levels above the flood planning level for the life of the dwellings;
- OEH and SES support the proposal; and
- evacuation and local adaption planning is to commence which will establish measures to address flood and evacuation risks for the Swansea area.



9/3/2018

**Monica Gibson**  
**Director Regions, Hunter**  
**Planning Services**

**Katrine O'Flaherty**  
**Team Leader, Hunter**

Contact Officer: Ben Holmes  
Senior Planner, Hunter  
Phone: 02 4904 2709