

Planning Proposal – Biodiversity Offsets - (PP_2016_LAKEM_001_00)

Report to Director City Strategy – Use of Delegations to finalise Amendment to Lake Macquarie LEP 2014 – Biodiversity Offsets.

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Report By: Strategic Planner – Angel Troke

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Précis:

A Planning Proposal (Attachment 1) to facilitate the subdivision of biodiversity offsets associated with development and rezoning applications was exhibited from 14 May 2016 to 30 May 2016. Council received no public submissions on the Planning Proposal and three responses from government agencies, though no major concerns were raised and no changes are proposed to the planning proposal.

This report recommends the use of the Director of City Strategy's Delegation of Authority and delegations granted by the Minister for Planning and Environment to make the local environmental plan (LEP) under section 59 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

Background:

Council resolved on 14 September 2015 (15STRAT051), to prepare a draft amendment to Lake Macquarie Local Environmental Plan (LEP) 2014 (Attachment 2). The draft amendment included a number of administrative changes to the current LEP. One of these issues related to a proposed new clause to facilitate the creation of small biodiversity offset sites. Under the current Lake Macquarie LEP 2014 there are no provisions to permit the creation of a biodiversity offset site, where the lot does not meet the minimum lot size provisions.

Council requested a Gateway Determination for the draft amendment. The Department of Planning and Environment (DoPE) advised Council to proceed with the biodiversity offset clause as a stand alone amendment as this may require more time and consideration. After further consultation with the Office of Environment and Heritage, a separate Gateway Determination was issued by the Department of Planning and Environment relating to the biodiversity offset clause. The Gateway determination granted Council delegations under s59 of the EP&A Act 1979 to make the LEP on behalf of the Minister for Planning (Attachment 3). Community consultation has now occurred and no submissions from the public were received.

Proposal:

It is proposed that the Director of City Strategy's Delegation of Authority be used to advise the Minister for Planning and Environment that no changes are required to the Planning Proposal and to make the plan. A resolution from Council is not required to advise the Minister when this Delegation of Authority is exercised. This delegation enables the Director of City Strategy:

To advise the Minister for Planning that no change is required to a Planning Proposal for a minor matter, at the conclusion of the community consultation process for that Planning Proposal. A minor Planning Proposal would be:

- 1) Where the Planning Proposal clearly articulated the nature of the change to the LEP at the section 56(1) stage of the amendment process; and
- 2) Where the Gateway Determination has directed that the LEP amendment will be dealt within a timeframe of 9 months or less.
- 3) Where no submissions are received by Council during exhibition, that requests a change to the Planning Proposal.

The Planning Proposal complies with this delegation, specifically:

- the Planning Proposal (Attachment 1) clearly articulated the nature and justification of the change to the LEP at the section 56(1) stage;
- no public submissions were received for Council to consider;
- the Gateway Determination requires the LEP amendment to be completed within a timeframe of 9 months.

As the Department of Planning and Environment also issued authorisation for Council to exercise delegation to make the plan under section 59 of the *Environmental Planning and Assessment Act 1979*, Parliamentary Counsel will be directly requested. Upon receipt of Parliamentary Counsel opinion, the plan will be made pursuant to the Minister's delegation of authority.

Consultation:

Government agencies

The Gateway determination required no consultation with government agencies, however consultation has occurred with Office of Environment and Heritage (OEH), the Department of Industry Resources and Energy and the NSW Rural Fire Service. These responses are summarised below:

- *Office of Environment and Heritage*

OEH supported the objectives of the planning proposal to facilitate offsets as part of rezoning and development applications. OEH supported the amendment, which seeks to provide greater flexibility for subdivision where this results in a biodiversity offset site which will be managed in perpetuity under an approved conservation mechanism.

- *Department of Industry Resources and Energy – Geological Survey of NSW (GSNSW)*

All planning proposals within the vicinity of state or regional significant mineral resources under coal, mineral or petroleum title, or identified in the Mineral Resource Audit - Lake Macquarie City should be referred to GSNSW.

While GSNSW does not have concerns with the proposal in general, each proposed offset would require site specific assessment by GSNSW. GSNSW also recommend the use of the Biobank scheme, or equivalent under the Biodiversity Conservation Bill, as the preferred offset mechanism.

Planning Comment:

Consultation would occur when biodiversity offset sites are proposed in accordance with requirements of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*.

- *NSW Rural Fire Service*

No objection to the proposal. *Planning for Bushfire Protection 2006* should be considered in any subsequent development application, especially in regard to:

- The provision of asset protection zones and consideration given to regeneration works and bush fire hazards within the offset site and future buildings.
- Consideration should be given to the incorporation of perimeter roads where development will face onto the bush fire prone vegetation

Planning Comment:

Future development applications will address *Planning for Bushfire Protection 2006*.

Public exhibition

Public exhibition of the Planning Proposal occurred between 14 May to 30 May 2016. Council received no public submissions on the Planning Proposal.

Implications:

Policy Implications:

The Planning Proposal is consistent with all relevant policies and planning strategies.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

The Planning Proposal will amend LMLEP 2014 as outlined in the *Background* and *Proposal* section of this report and as outlined in the Planning Proposal contained in Attachment 1.

Lifestyle 2030 Strategy (LS2030)

Council's LS2030 Strategy identifies that adequate and appropriate biodiversity offsets will be critical in offsetting the cumulative impacts of clearing and biodiversity losses associated with development proposed under the LS2030. The planning proposal is consistent with this outcome, in helping to achieve appropriate offsets identified for future development areas.

Biodiversity Planning Policy and Guidelines for (LEP) Rezoning Proposals

Council has an adopted Biodiversity Planning Policy and Guidelines for (LEP) Rezoning proposals. This Policy contains a number of principles to achieve a strategic approach to biodiversity planning and contains criteria when offsets may be considered. The proposed changes to the LEP will help facilitate biodiversity offsets to mitigate losses from development in accordance with these Guidelines.

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy recognises the role of improving and maintaining the region's biodiversity and identifies the need for the Lower Hunter Region Conservation Plan.

Lower Hunter Regional Conservation Plan (LHRCP)

The LHRCP identifies Biodiversity Banking and Offsets Scheme (BioBanking) mechanisms and planning agreements as methods for achieving offsets and identifies a number of offset principles. The LHRCP identifies future proposed developments in the Lower Hunter will be assessed against current legislation and that impacts to biodiversity should be first avoided or mitigated, but where appropriate, the Government will consider offsetting by entering into planning agreements with the developer. Ensuring that sites can be subdivided for biodiversity offsets is consistent with the LHRCP.

State Environmental Planning Policies (SEPPs)

An assessment of the proposal against relevant SEPPs is included in the Planning Proposal in Attachment 1. The proposal is consistent with the provisions of relevant SEPPs.

Section 117 Ministerial Directions

An assessment of the proposal against relevant Ministerial Directions is included in the Planning Proposal in Attachment 1. The proposal is consistent with all the relevant Ministerial Directions.

Environmental Implications:

The planning proposal will not negatively impact on habitat, threatened species, population or ecological communities. The planning proposal will allow for the subdivision of biodiversity offsets needed to mitigate the impacts from rezoning and development applications in accordance with the regulatory framework governing biodiversity offsets. Biodiversity offsets help achieve long-term conservation outcomes where development and infrastructure projects are likely to impact biodiversity.

Social Implications:

There are no social implications associated with this change to the LMLEP 2014. The planning proposal will facilitate rezoning, subdivision and development on land through the creation of biodiversity offset sites and satisfying relevant legislative provisions.

Infrastructure Asset Implications:

There will be no infrastructure asset implications, as the amendments to the LEP are administrative.

Financial Implications:

There will be no specific financial implications for Council apart from staff resources involved in the processing of the LEP amendment in accordance with Council's LEP amendment process.

Risk and Insurance Implications:

There is minimal risk or insurance implications to Council with the processing of this amendment. The preparation of an amendment to LMLEP 2014 is a regular Council activity governed by the provisions of the *EP&A Act 1979*. The level of risk attached to this activity will be minimised through following the process as established by the *EP&A Act 1979* and Environmental Planning and Assessment Regulation 2000 as well as Council's Amending Local Environmental Plan Procedure and Policy.

Options:

1. The Director of City Strategy exercises his Delegation of Authority and exercises delegation from the Department of Planning and Environment to make the LEP on behalf of the Minister for Planning and Environment. This will help facilitate biodiversity offsets sites that may be needed for some development and rezoning applications. This is the recommended option.
2. The Director of City Strategy direct staff to report the results of the exhibition process and the final Planning Proposal to Council for a resolution to make the plan. This is not the preferred option. A report to Council would delay the completion of the project.

Conclusion:

It is recommended that the Director of City Strategy endorse the Planning Proposal as contained in Attachment 1. Upon receipt of Parliamentary Counsel opinion, the plan will be made pursuant to the Minister's delegated authority to help facilitate offset sites.

Endorsement

I endorse this report, in accordance with Delegations of Authority and exercise delegations to make the LEP on behalf of the Minister for Planning in accordance with section 59 of the *Environmental Planning and Assessment Act 1979*.

Tony Farrell
Director City Strategy
Lake Macquarie City Council

Date: 25 August 2016

Attachment 1 Planning Proposal – Biodiversity Offsets (D07761174)

Attachment 2 Council Report (D07433322)

Attachment 3 Gateway Determination (D07823544)